

AA 659-99 Woods Landing Sub 9-10-1965

MSA_S-1829-247

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 974-2426 Fax: (410) 974-5338

November 20, 1997

Ms. Penny Chalkley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6302
Annapolis, Maryland 21401

Dear Ms. Chalkley:

We received an inquiry about the reforestation requirements of the Woods Landing II subdivision. We understand that the developer cleared up to 30% of the site and has purchased an easement off-site. We simply ask that your office provide an updated, approved, final site plan along with the location of the easement. Please provide the acreage figures for this site including the area cleared, acreage of mitigation required, and number of acres eased. Also, was the easement for a limited time period or was it a perpetual easement?

Thank you for your cooperation with this request. If you have any questions, please call me at (410) 974-2426.

Sincerely,

A handwritten signature in cursive script, reading "Lisa A. Hoerger".

Lisa A. Hoerger
Environmental Specialist

cc: AA 156-91

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

REN SEREY
EXECUTIVE DIRECTOR
410-974-2418 /26
410-974-5338 FAX



WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

May 8, 1996

Ms. Penny Chalkley
Anne Arundel County
Department of Planning and Code Enforcement
Heritage Office Center
2664 Riva Road
P O Box 6675
MS 6302
Annapolis, Maryland 21401

Re: Woods Landing II Revised Final
P#1995-221

Dear Ms. Chalkley:

Penny:

I have reviewed the latest revised site plan for Woods Landing II. I concur with all of item #8 on your May 8, 1996 memo to Lori Allen. Any additional impervious surface within the subdivision must remain at or below the limits specified in the Critical Area Law unless a variance is granted, regardless of what the covenants allow. This office cannot support any variances to the impervious surface limits. Based on the amount of impervious surface proposed, this office recommends that impervious surface figures be confirmed before building permits are issued to ensure the subdivision does not exceed the 15% impervious limit.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, reading "Regina A. Esslinger".

Regina A. Esslinger, Chief
Project Evaluation Division

cc: Ms. M. Claudia Jones
Mr. Ren Serey
AA156-91, 779-95

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410- 820-5093 FAX

REN SEREY
EXECUTIVE DIRECTOR
410-974-2418 /26
410-974-5338 FAX



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STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

April 2, 1996

Ms. Lori Allen
Anne Arundel County
Department of Planning and Code Enforcement
Heritage Office Center
2664 Riva Road
P O Box 6675
MS 6303
Annapolis, Maryland 21401

Re: Woods Landing II Revised Final
P#1995-221

Dear Ms. Allen: *Lori:*

I have reviewed the revised site plan for Woods Landing II and I have no comments at this time.
Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Regina A. Esslinger".

Regina A. Esslinger, Chief
Project Evaluation Division

RAE/jjd

cc: Mr. Glenn Therres, DNR Wildlife
Ms. M. Claudia Jones
Mr. Ren Serey
AA156-91, 779-95

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

REN SEREY
EXECUTIVE DIRECTOR
410-974-2418 /26
410-974-5338 FAX



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45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

January 17, 1996

Ms. Lori Allen
Anne Arundel County
Department of Planning and Code Enforcement
Heritage Office Center
2664 Riva Road
P O Box 6675
MS 6303
Annapolis, Maryland 21401

Re: Woods Landing II

Dear Ms. Allen: *Lori*

I have reviewed the revised site plan for Woods Landing II and I have the following comments:

- 1) The Buffer is not expanded properly along lots 6 and 7. A correctly expanded Buffer will show 50 feet from the top of the steep slopes and will impact the current footprints of the proposed dwellings on these lots. We cannot support variances for dwellings in the Buffer; we recommend that these backyards also be moved out of the Buffer to preclude homeowner disturbance.
- 2) The amount of impervious surface is currently 14.87%. Penny indicated that she cannot verify whether this figure is correct. All impervious figures should be provided to determine that the subdivision does not exceed 15%. This stated amount of impervious surface does not allow any flexibility in permitting homeowners to install sheds, patios, etc. Our office will not support a variance to exceed the impervious surface limits.
- 3) The most recent survey for forest interior dwelling birds indicated that the site is not classified as forest interior dwelling bird habitat for Critical Area purposes; however, several of these birds do breed on the site. For the protection of these birds, we recommend that major construction not occur during the May through August breeding season. This is particularly important for the forested areas closest to the water.

Ms. Allen
January 17, 1996
Page Two

4) The developer cannot clear any trees or shrubs or put down impervious surface to create the proposed path in the Buffer. The site plan indicates the path will be mulched.

5) The site plan shows tidal marsh soils along the eastern edge of the site, but does not expand the Buffer. If this area is tidal wetlands then the Buffer must be measured from the landward edge of the wetlands. If this area is nontidal wetlands, then it should be noted on the site plan.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, reading "Regina A. Esslinger".

Regina A. Esslinger, Chief
Project Evaluation Division

RAE/jjd

cc: Mr. Steve Callahan, PACE
Mr. Glenn Therres, DNR Wildlife
Ms. M. Claudia Jones
Mr. Ren Serey
AA156-91, 779-95

974-2571

RE: An Appeal from an Administrative * BEFORE THE
 Decision of the Department of *
 Planning and Code Enforcement * BOARD OF APPEALS
 * OF ANNE ARUNDEL
 WOODS LANDING NO. II * COUNTY
 JOINT VENTURE, *
 *
 Petitioner Case No. BA 44-96A
 *

* * * * *

MEMORANDUM OF OPINION**SUMMARY OF PLEADINGS**

This is an appeal from an administrative decision of the Anne Arundel County Department of Planning and Code Enforcement, approving subdivision plats for the subdivision known as Section Two of Woods Landing.

SUMMARY OF EVIDENCE

A general partner of Woods Landing II Joint Venture submitted numerous documents from his business records, relating to the history of this subdivision. These documents dated from 1984 and were accepted into evidence as Petitioner's Exhibits 1 through 17.

In addition to the documents submitted by the witness, counsel for the Petitioner submitted copies of other documents, including portions of the subdivision regulations (Petitioner's Exhibits 18 and 23), various County Council Bills (Petitioner's Exhibits 19 - 22 and 24 - 27), a 1978 approved plat (Petitioner's Exhibit 28), the 1980 plat of Woods Landing Section One (Petitioner's Exhibit 29), three plats of Woods Landing Section Two (Petitioner's Exhibits 30A - C), and the four plats of Woods Landing Section Two currently under appeal (Petitioner's Exhibits 31A - D).

A registered professional engineer testified that he was familiar with both the former and the current subdivision regulations in the county. He testified that the former subdivision regulations (Petitioner's Exhibit 23) contained no provision requiring that schools be adequate before the approval of a subdivision. He also testified that there was no provision in the 1957 regulations relating to townhouses (including parking requirements for townhouses) or to a duplication of subdivision names. He testified that his office prepared the most recent subdivision plats (Petitioner's Exhibits 31A - D) and that these plats were drawn to comply with the 1957 subdivision regulations. In fact, the witness stated that the plats exceed the former requirements. He also testified that, if a 15 percent impervious coverage limit were applicable to the property, the plats show that the currently proposed subdivision does not exceed 15 percent. On cross examination, the witness was asked a number of questions about the plats. He acknowledged that Winter Gull Lane is designed with a "turnaround." He also testified that each proposed house includes a note showing "future wooden deck" and he testified that these decks usually are optional, although formal architectural plans have not yet been approved by the county. He did not know the total square footage of the proposed decks, but he testified that they were not included in the impervious coverage calculations as the county does not consider wood decks to be impervious.

The Planning Officer for the Anne Arundel County Public Schools was called as a witness by the Protestants. He testified that his office receives copies of subdivision documents and reviews them in order to determine the impact on schools, in accordance with the Adequate Facilities Ordinance. As of December 13, 1995, his office notified the

Department of Planning and Code Enforcement (PACE) that Windsor Farm Elementary School, which would serve the subdivision, was over-capacity. That same situation currently exists. As a result, his office would not recommend approval of the subdivision now based on lack of capacity in the elementary schools. On cross examination, the witness acknowledged that the Adequate Facilities Ordinance says that the ultimate decision on the adequacy of schools is made by PACE, based on a recommendation from the school system.

The Chief of the Project Evaluation Section for the Critical Areas Commission also was called as a witness by the Protestants. She testified that her office had reviewed the subdivision plat and determined that it complied with the 15 percent impervious coverage requirements of the law. As a result, the Critical Areas Commission recommended approval.

A property line surveyor testified that he had calculated the total impervious surface by adding the square footage of all roads, sidewalks and all other surfaces that water would not infiltrate. He testified that he used the exact dimensions, where provided, of buildings, roads and stoops. His conclusion was that the impervious coverage in the subdivision was greater than shown on the plats. He found 207,959 square feet of impervious coverage, as opposed to the 203,252 square feet shown on the plats. His calculations would indicate a coverage of 15.32 percent. Specifically, he found more impervious coverage in calculating the parking courts and the sidewalks. The witness also testified that he had reviewed final development plans (Protestant's Exhibit 8) and had located another road that had not been on the previous plan. However, he found no change in the impervious coverage calculations to account for the additional road. On cross examination, the witness acknowledged that his calculations were made from the Grading and Sediment Control Plan (Protestant's Exhibit 2),

and not from the final development plans (Protestant's Exhibit 8), which he had not measured.

A representative of PACE testified that he reviewed the application for subdivision approval. This review was of a revised final plat, which means that plats already had been approved by PACE but were changed by the developer. By policy, PACE does not do another Adequate Facilities Ordinance review when such changes are made, and his office reviewed the application only as to critical area compliance. He also testified that he did not review the name of the subdivision again because the name had been approved many years ago at the time that the preliminary plans were approved. On cross examination by the Petitioner's counsel, the witness testified that the "lanes" designated on the plat are drive aisles for the parking lots, and are not considered streets or roads.

Another representative of PACE testified that she had reviewed the plans and determined that they met the 15 percent impervious coverage maximum under the Code.

The Petitioner called an engineer/surveyor as a rebuttal witness. He testified that he had been requested to do an independent review of the impervious coverage, and he had not previously been involved with the project. He testified that he had reviewed the Grading and Sediment Control Plan (Protestant's Exhibit 8) and noted that the project now is proposed to have a different type of curbing than previously proposed. The different curbing results in a 6 percent difference in impervious coverage, which could account for the variation in the impervious coverage calculations found by the Protestant's surveyor. The witness testified that his impervious coverage calculation found 14.96 percent of impervious surfaces, as compared with the Petitioner's engineer's calculation of 14.97 percent. He also testified that,

in his professional opinion, the elevated wood decks are pervious because of wooden slats that allow water to flow through.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

FINDINGS AND CONCLUSIONS

This case returns to the Board for a third visit, having first been appealed to the Board (and later to the courts) in 1992. According to the testimony, the Petitioner decided to submit a revised final plat to PACE. This was acceptable to the county agency. By submitting a revised final plat, the Petitioner was able to hold in place all prior approvals that had been granted, however, the Petitioner was required to comply with Critical Area requirements.

Subsequently, the County reversed its position and rescinded approval of the revised final plat. This decision also was appealed to the Board and, in 1995, the Board reversed the administrative decision and directed that the subdivision be processed as a revised final so long as critical area requirements were met. In accordance with this ruling, PACE ultimately approved the final plats in 1996. This current appeal then was filed.

The Petitioner contends that it is exempt from all subdivision requirements, specifically those relating to schools, traffic, sidewalks, impervious surface, and subdivision name. The Protestants disagree. Based on a review of the testimony and the evidence, this Board concludes that the Petitioner's plans are exempt from current subdivision regulations as to schools, traffic, sidewalks and subdivision name, but not as to Critical Area standards.

County Council Bill 23-84 (Petitioner's Exhibit 19) amended the Anne Arundel County Code to exempt subdivisions from Code requirements if preliminary plan

applications for a subdivision were filed within 50 working days of the effective date of the Bill, so long as preliminary approval was received by May 31, 1985. The effective date of the bill was May 8, 1984. According to the evidence presented, the application for preliminary approval of the subject subdivision had been filed even before the effective date of Bill 23-84, and approval of the preliminary plan was received more than nine months prior to the statutorily required deadline (see Petitioner's Exhibits 1 and 2).

As a result of this analysis, the Board concludes that the Petitioner's subdivision was exempted from the provisions of the present subdivision regulations. The subdivision, however, is not exempt from all subdivision regulations. It is required to comply with the regulations that were in effect as of November 1, 1969, known as the 1957 Subdivision Regulations. These regulations did not include the so-called adequate facilities provisions, which were not adopted until years later. As a result, the Board concludes that the language regarding the adequacy of schools and traffic that currently exists does not apply to the subject subdivision.

These 1957 regulations did not specifically address townhouses or townhomes by that name. Instead, at that time, these types of dwellings were considered to be group houses. A review of the 1957 regulations indicates that there are no sidewalk standards relating to group houses. Thus, because the Board already has concluded that this subdivision must meet the 1957 Subdivision Regulations, and because there were no sidewalk requirements in those regulations that would apply to this subdivision, the proposal technically meets the 1957 standards.

With regard to the name of the subdivision, the Board finds that the 1957 Subdivision Regulations required a preliminary plat to include the proposed name of the subdivision, and prohibited the plan from duplicating or closely approximating the name of any other subdivision in Anne Arundel County (see Petitioner's Exhibit 23). According to the documents submitted, the property that is now known as Woods Landing was originally named Bay Head Cove. In 1978, a plat was approved for Bay Head Cove Section One (see Petitioner's Exhibit 28). By 1980, the name had changed to Woods Landing Section One (see Petitioner's Exhibit 29). A review of the plats reveals that there clearly was other property that was to be developed later. In addition to the rather obvious fact that there would be no reason to designate a "Section One" if there were not going to be subsequent sections, the plats, themselves, designate property for future development. Accordingly, the Board concludes that these are not two separate subdivisions, but merely are two separate sections of the same subdivision. Under the 1957 Subdivision Regulations, there is no requirement that separate sections of the same subdivision have different names.

Finally, the Board turns to the critical area concerns. Although the Petitioner contends that it is exempt from current critical area requirements, the Board concludes that the Petitioner's analysis is flawed. As previously noted, the most recent decision of this Board relating to this property required that the subdivision comply with all current critical area requirements (see Petitioner's Exhibit 16). Thus, the Board must review the current plans to determine whether or not they comply with critical area requirements.

Testimony on this issue was presented by a variety of witnesses. The Protestants presented a property line surveyor who said that he had calculated the total impervious

surface and had found it to exceed the 15 percent maximum. In fact, the witness said that his calculations showed 15.32 percent of impervious coverage. This testimony, however, was effectively rebutted, in the Board's view, by the testimony of an engineer and surveyor who indicated that the different type of curbing currently being proposed would have an impact on the impervious coverage. That witness had calculated the impervious coverage at 14.96 percent, based upon the final plans. This testimony was not far off from the original calculation performed by the Petitioner's engineer, who found the impervious coverage to be 14.97 percent. These calculations, and the plans on which they were made, also were reviewed by the Maryland Critical Areas Commission staff. On the basis of these plans, the Critical Areas Commission recommended approval of the project.

Based on the totality of the evidence, the Board finds that the Petitioner has met its burden of proof to establish that the impervious coverage on the site will not exceed 15 percent. As a result, the Board concludes that the Petitioner has met the applicable critical area requirements for this project.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of March, 1997, by the County Board of Appeals of Anne Arundel County, ORDERED, that the appeal from the administrative decision of the Department of Planning and Code Enforcement is hereby denied, and the approval of the Petitioner's subdivision plans is hereby affirmed.

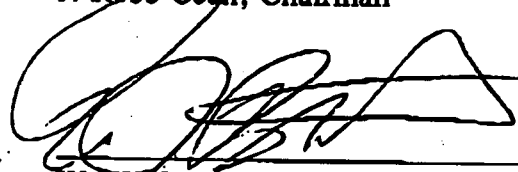
Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 60 days of date of the expiration of the appeals period, otherwise they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



J. Robb Cecil, Chairman

W. Jay Breitenbach, Vice Chairman

F. George Deuringer, Member

Anthony V. Lamartina, Member

Wesley W. Saunders, Member

NON-TIDAL WETLANDS

There are no non-tidal wetlands located in the proposed development areas. There are, however, non-tidal wetlands located on the smaller parcel and the southwest corner of the larger parcel. These areas will not be impacted by development.

TIDAL WETLANDS

The tidal wetlands boundary exists around the perimeter of the site bordered by the Little Magothy River, and the tidal marsh to the east. *where >* These areas will not be impacted, and will be protected by a 100 foot buffer. Some impacts to the 100 foot buffer will occur through installation of storm drain outfalls. This issue will be addressed in the non-tidal wetland permit process.

SUBMERGED VASCULAR PLANTS

Review of the 1985 and 1986 submerged vascular plant maps by Orth et al. in Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and Tributaries indicates no submerged plant species in the project vicinity. Site visits in November 1991 did not reveal the presence of any submerged aquatic vegetation, in the Little Magothy River, near the project site. A copy of the SAV survey, performed by McCarthy and Associates in May 1994, is attached (Appendix C).

SHELLEFISH

According to the Oyster bar maps for the Chesapeake Bay and Little Magothy River (Figure 2), Natural Oyster Bar (N.O.B.) 4-3 exists at the mouth of the Little Magothy River. This N.O.B. is approximately 0.8-0.9 miles from the nearest point on the site. Stormwater management on site is providing for quality treatment using infiltration and attenuation. This type of treatment is expected to prevent any adverse impacts to the oyster bar.

STORMWATER MANAGEMENT

Stormwater management on site will be handled by infiltration and attenuation devices which will provide quality treatment before the runoff is released into the watershed. In case of backup in the system the overflow will be directed to outfall pipes and be released into the watershed.

PLANT COMMUNITIES

The vegetative composition over the whole site is relatively consistent, but some significant differences in the shrub layer, and physical location of the smaller parcel, made it necessary to break the site into five (5) parcels. The vegetatively, and topographically, distinct differences are described below. The complete list of species observed in each area is compiled in Table 1.

AREA 1 - South and Central Portions of the Larger Tract

This portion of the larger parcel is dominated by Yellow poplar (*Liriodendron tulipifera*) in the canopy, with some Red oak (*Quercus rubra*), White oak (*Quercus alba*), and Chestnut oak (*Quercus prinus*). The understory is dominated by Flowering dogwood (*Cornus florida*) and holly (*Ilex opaca*), along with young members of the canopy species. The shrub and vine layer is dominated by English ivy (*Hedera helix*), Japanese honeysuckle (*Lonicera japonica*) and Black cherry (*Prunus serotina*), along with a variety of other species. The herbaceous layer is very sparse, but is dominated by Christmas fern (*Polystichum acrostichoides*). Other herbaceous species were noted, but none of these were seen in any quantities.

Topography in the southern portion of this area drains to the south/southwest into a shallow swale that empties into the Little Magothy River.

AREA 2 - Northwest Corner of Larger Tract

The canopy in this area is a typical oak/hickory association found in upland hardwood forests. Four (4) species of oak are found here and one species of hickory (Table 4). Also found were some scattered Virginia pine (*Pinus virginiana*), Sassafras (*Sassafras albidum*), and Yellow poplar (*Liriodendron tulipifera*). The understory here is dominated by a thick layer of Mountain laurel (*Kalmia latifolia*) and holly (*Ilex opaca*), with scattered dogwood, cedar, and maple. The shrub and vine layers are dominated by Low blueberry (*Viburnum angustifolia*) and the greenbriers (*Smilax rotundifolia*, *Smilax glauca*) in the open areas. The herbaceous layer is dominated by Crane-fly orchid (*Tipularia discolor*) and other widely scattered species.

Topography in this area contains very steep slopes along the river. From the top of the steep slopes the topography drops towards the southeast, and areas 1 and 3.

AREA 3 - Eastern Side of Larger Tract

The canopy in this area is about an equal mix of White, Red, and Chestnut oak, Mockernut hickory, and Yellow poplar. The understory is dominated by Flowering dogwood (*Cornus florida*) and Black cherry (*Prunus serotina*). The shrub and vine layer in this area is more developed and is dominated by Blackberry (*Rubus allegheniensis*), Japanese honeysuckle (*Lonicera japonica*), and English ivy (*Hedera helix*). Also found was scattered Carrion flower (*Smilax herbacea*). The herbaceous layer is rather sparse, but appears to be dominated by Christmas fern (*Polystichum acrostichoides*) and Wild licorice (*Galium circaezans*).

Topography in this area continues to slope towards the southeast, and the tidal marsh.

AREA 4 - Western Portion of Smaller Tract

The canopy in this area is dominated by Yellow poplar (*Liriodendron tulipifera*) and Sweetgum (*Liquidambar styraciflua*), with scattered oaks, hickories, and cherries. The understory is dominated by Flowering dogwood (*Cornus florida*), with Black cherry (*Prunus serotina*) and Sassafras (*Sassafras albidum*) scattered about. The shrub and vine layer is dominated by Multiflora rose (*Rosa multiflora*), blackberry (*Rubus allegheniensis*), raspberry (*Rubus idaeus*), and Poison ivy (*Toxicodendron radicans*). The herbaceous layer is dominated by several species which include Wild onion (*Allium canadense*), Enchanters nightshade (*Circaea quadrisulcata*), and Wild licorice (*Galium circaezans*).

Topography in this area consists of a peak running north/south with low spots on the east and west. The eastern low spot contains a drainage channel and some non-tidal wetlands.

AREA 5 - Eastern Portion of Smaller Tract

This area contains open grassy space, scrub/shrub and some mature canopy species. The tree species in the wooded portion are dominated by Black locust (*Robinia pseudoacacia*) about 5-10 years old, with some Black cherry (*Prunus serotina*). The shrub layer is dominated by blackberry (*Rubus allegheniensis*) and Multiflora rose (*Rosa multiflora*), with some Sweet gum (*Liquidambar styraciflua*) present. The herbaceous layer is dominated by Rough-stemmed goldenrod (*Solidago rugosa*) and pokeweed (*Phytolacca americana*), with other solitary species members.

Topography in this area is flat, so any rainwater percolates directly into the soil.

POLLUTANTS

The only pollutants contained in runoff might be from lawn and garden fertilizers or automobile fluids. These substances should be handled by the proposed stormwater management, and should not pose a concentrated threat to the watershed.

MITIGATION

The only mitigation that may be required is woodland replacement of disturbed areas. This may be done on or off site or if no sites are available, a fee based on square footage of disturbance will be assessed.

BUFFER MANAGEMENT PLAN

A minimum 100 foot buffer to tidal wetlands will be maintained throughout the project site except as necessary for stormwater outfalls.

Steep slopes should not be disturbed because they are all within the 50 foot buffer.

CALCULATIONS

The amount of woodland disturbance required for this project will be 367,024 square feet (8.43 acres), and will amount to approximately 29.37 percent of the total wooded area. The amount of impervious area to be installed will be 201,396 square feet (4.62 acres), and will amount to approximately 14.83 percent of the total site area.

CONSULTANTS DATES OF WORK

Report Prepared By: James E. Irre
McCarthy and Associates, Inc.
14458 Old Mill Road, Suite #201
Upper Marlboro, Maryland 20772

Dates of Field Work: November 7, 8, and 12, 1991

Consultant: James E. Irre

Report revised: November 20, 1995 by James E. Irre

Table 1

Vegetative Species Observed At
Woods Landing, Section II
Anne Arundel County, Maryland

Area 1 - South and Central Portion of Larger Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
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A. Canopy

Mockernut Hickory	<i>Carya tomentosa</i>	UPL
Yellow Poplar	<i>Liriodendron tulipifera</i>	FACU
White Oak	<i>Quercus alba</i>	FACU
Southern Red Oak	<i>Quercus falcata</i>	FACU
Northern Red Oak	<i>Quercus rubra</i>	FACU

B. Understory

Red Maple	<i>Acer rubrum</i>	FAC
Flowering Dogwood	<i>Cornus florida</i>	FACU
American Holly	<i>Ilex opaca</i>	FACU
Black Cherry	<i>Prunus serotina</i>	FACU

C. Shrub and Vine

Flowering Dogwood	<i>Cornus florida</i>	FACU
American Beech	<i>Fagus grandifolia</i>	FACU
English Ivy	<i>Hedera helix</i>	FACU
American Holly	<i>Ilex opaca</i>	FACU
Privet	<i>Ligustrum vulgare</i>	FACU
Japanese Honeysuckle	<i>Lonicera japonica</i>	FAC-
Black Cherry	<i>Prunus serotina</i>	FACU
Multiflora Rose	<i>Rosa multiflora</i>	FACU
Glaucous Greenbrier	<i>Smilax glauca</i>	FACU
Greenbrier	<i>Smilax rotundifolia</i>	FAC
Poison Ivy	<i>Toxicodendron radicans</i>	FAC
Northern Arrowwood	<i>Viburnum recognitum</i>	FACW

D. Herbaceous

Tall Hairy Agrimony	<i>Agrimonia gryposepala</i>	FACU
Wild Onion	<i>Allium canadense</i>	FACU

Bushy aster	<i>Aster dumosus</i>	FAC
Cutleaf Grape Fern	<i>Botrychium dissectum</i>	FAC
Rattlesnake Fern	<i>Botrychium virginianum</i>	FACU
Christmas Fern	<i>Polystichum acrostichoides</i>	FACU
Roughstem goldenrod	<i>Solidago rugosa</i>	FAC

Area 2 - Northwest Corner of Larger Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
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A. Canopy

Mockernut Hickory	<i>Carya tomentosa</i>	UPL
Yellow Poplar	<i>Liriodendron tulipifera</i>	FACU
Virginia Pine	<i>Pinus virginiana</i>	UPL
White Oak	<i>Quercus alba</i>	FACU
Southern Red Oak	<i>Quercus falcata</i>	FACU
Chestnut Oak	<i>Quercus prinus</i>	UPL
Northern Red Oak	<i>Quercus rubra</i>	FACU
Sassafras	<i>Sassafras albidum</i>	FACU

B. Understory

Red Maple	<i>Acer rubrum</i>	FAC
Flowering Dogwood	<i>Cornus florida</i>	FACU
American Holly	<i>Ilex opaca</i>	FACU
Red Cedar	<i>Juniperus virginiana</i>	FACU
Mt. Laurel	<i>Kalmia latifolia</i>	FACU

C. Shrub and Vine

American Beech	<i>Fagus grandifolia</i>	FACU
Japanese Honeysuckle	<i>Lonicera japonica</i>	FAC-
Glaucous Greenbrier	<i>Smilax glauca</i>	FACU
Greenbrier	<i>Smilax rotundifolia</i>	FAC
Low Blueberry	<i>Viburnum angustifolium</i>	FACU
Highbush Blueberry	<i>Vaccinium corymbosum</i>	FACW

D. Herbaceous

Wild Onion	<i>Allium canadense</i>	FACU
Wild Licorice	<i>Galium circaeazans</i>	UPL
Teaberry	<i>Gaultheria procumbens</i>	FACU
Bracken Fern	<i>Pteridium aquilinum</i>	FACU

Cranefly Orchid	Tipularia discolor	FACU
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Area 3 - Eastern Side of Larger Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
--------------------	------------------------	------------------

A. Canopy

Mockernut Hickory	<u>Carya tomentosa</u>	UPL
Yellow Poplar	<u>Liriodendron tulipifera</u>	FACU
Southern Red Oak	<u>Quercus falcata</u>	FACU
Chestnut Oak	<u>Quercus prinus</u>	UPL
Northern Red Oak	<u>Quercus rubra</u>	FACU

B. Understory

Flowering Dogwood	<u>Cornus florida</u>	FACU
Black Cherry	<u>Prunus serotina</u>	FACU
Sassafras	<u>Sassafras albidum</u>	FACU

C. Shrub and Vine

Red Maple	<u>Acer rubrum</u>	FAC
Strawberry Bush	<u>Euonymus americanus</u>	FAC
English Ivy	<u>Hedera helix</u>	FACU
American Holly	<u>Ilex opaca</u>	FACU
Spicebush	<u>Lindera benzoin</u>	FACW
Japanese Honeysuckle	<u>Lonicera japonica</u>	FAC-
Virginia Creeper	<u>Parthenocissus quinquefolia</u>	FACU
White Pine	<u>Pinus strobus</u>	FACU
Staghorn Sumac	<u>Rhus typhina</u>	UPL
Black Locust	<u>Robinia pseudoacacia</u>	FACU
Multiflora Rose	<u>Rosa multiflora</u>	FACU
Allegheny Blackberry	<u>Rubus allegheniensis</u>	FACU
Red Raspberry	<u>Rubus idaeus</u>	UPL
Elderberry	<u>Sambucus canadensis</u>	FACW
Greenbrier	<u>Smilax rotundifolia</u>	FAC
Poison Ivy	<u>Toxicodendron radicans</u>	FAC

D. Herbaceous

Tall Hairy Agrimony	<u>Agrimonia gryposepala</u>	FACU
Wild licorice	<u>Galium circaeazans</u>	UPL

Christmas Fern	<u>Polystichum acrostichoides</u>	FACU
Roughstem goldenrod	<u>Solidago rugosa</u>	FAC

Area 4 - Western Portion of Smaller Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
--------------------	------------------------	------------------

A. Canopy

Mockernut Hickory	<u>Carya tomentosa</u>	UPL
Sweet Gum	<u>Liquidambar styraciflua</u>	FAC
Yellow Poplar	<u>Liriodendron tulipifera</u>	FACU
Black Cherry	<u>Prunus serotina</u>	FACU
Southern Red Oak	<u>Quercus falcata</u>	FACU
Northern Red Oak	<u>Quercus rubra</u>	FACU

B. Understory

Flowering Dogwood	<u>Cornus florida</u>	FACU
Black Cherry	<u>Prunus serotina</u>	FACU
Sassafras	<u>Sassafras albidum</u>	FACU

C. Shrub and Vine

Devil's club	<u>Aralia spinosa</u>	FAC
Strawberry Bush	<u>Euonymus americanus</u>	FAC
Japanese Honeysuckle	<u>Lonicera japonica</u>	FAC-
Smooth Sumac	<u>Rhus glabra</u>	UPL
Blackberry	<u>Rubus allegheniensis</u>	FACU
Black Willow	<u>Salix nigra</u>	FACW

D. Herbaceous

Red Maple	<u>Acer rubrum</u>	FAC
Wild Onion	<u>Allium canadense</u>	FACU
Cutleaf Grape Fern	<u>Botrychium dissectum</u>	FACU
Enchanters nightshade	<u>Circaea quadrisulcata</u>	UPL
Hairy bedstraw	<u>Galium pilosum</u>	UPL
Sweet-scent Bedstraw	<u>Galium triflorum</u>	FACU
English Ivy	<u>Hedera helix</u>	FACU
American Holly	<u>Ilex opaca</u>	FACU
Jewelweed	<u>Impatiens capensis</u>	FACW
Privet	<u>Ligustrum vulgare</u>	FACU
Spicebush	<u>Lindera benzoin</u>	FACW

Downy lobelia	<i>Lobelia puberula</i>	FACW
Virginia Creeper	<i>Parthenocissus quinquefolia</i>	FACU
Christmas Fern	<i>Polystichum acrostichoides</i>	FACU
Glaucous Greenbrier	<i>Smilax glauca</i>	FACU
Carrion flower	<i>Smilax herbacea</i>	FAC
Greenbrier	<i>Smilax rotundifolia</i>	FAC
Bog goldenrod	<i>Solidago uliginosa</i>	OBL

Area 5 - Eastern Portion of Smaller Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
--------------------	------------------------	------------------

A. Canopy

White Pine	<i>Pinus strobus</i>	FACU
Sweet Cherry	<i>Prunus avium</i>	UPL
Black Locust	<i>Robinia pseudoacacia</i>	FACU

B. Shrub and Vine

Sweet Gum	<i>Liquidambar styraciflua</i>	FAC
Black Cherry	<i>Prunus serotina</i>	FACU
Multiflora Rose	<i>Rosa multiflora</i>	FACU
Allegheny Blackberry	<i>Rubus allegheniensis</i>	FACU

C. Herbaceous

Panicled aster	<i>Aster simplex</i>	FACW
Lanceleaf goldenrod	<i>Euthamia graminifolia</i>	FAC
Fescue	<i>Festuca</i> sp.	N/A
Pokeweed	<i>Phytolacca americana</i>	FACU
Roughstem goldenrod	<i>Solidago rugosa</i>	FAC

EASEMENTS ON OFF-SITE FOREST GUIDELINES

For the purpose of calculating acreage and considering the suitability of placing easements on off-site forest as a replacement for reforestation in the Critical Area, the following guidelines shall be used:

Developable land is given equal area credit at the replacement ratio for the project. It must be upland and no steep slopes, no buffers or expanded buffers. (If 10 acres of clearing requires $1\frac{1}{2}$ times replacement, then equal area credit is 15 acres of upland). Easement is in perpetuity on all contiguous acreage.

Steep slopes, wetlands, floodplains, buffers and expanded buffers are credited at $\frac{1}{2}$ (.50) the replacement ratio for the project. (If 10 acres of clearing requires $1\frac{1}{2}$ times replacement, then $\frac{1}{2}$ (.50) area credit is 30 acres of non-upland and buffer). Easement is in perpetuity on all contiguous acreage. It is important to credit these areas so that a protective easement can include them. They are often areas of rare and endangered species, provide contiguous habitat to our valued water resources, reduce erosion potential and enhance the preservation of habitat protection areas. Floodplains may not comprise more than 50% of the total reforestation obligation.

Combination - must be contiguous (10 acres of clearing at $1\frac{1}{2}$ times = 15 acres. 5 acres of upland for equal credit; other $10 \div .50 = 20$ acres. Total 25 acres). Easement is in perpetuity on all contiguous acreage.

Easements may be placed on RCA land where development potential is reduced because of the possibility of other uses permitted on existing legal lots; i.e.

- timber harvesting
- sand and gravel operation
- conversion of upland to agriculture
- pasturing of livestock, stables, animal husbandry
- churches
- aquaculture operations, fish hatcheries, etc.
- golf courses
- parks
- nonprofit institutions
- plant nurseries
- trailer park expansion
- marina expansion

However, all dedicated land will be deleted from the total acreage available to calculate density, clearing or impervious coverage for any other project.

Preference will be given to:

- Unfragmented blocks of forest or forest in which openings will be planted
- Forest adjacent to or within HPA's
- Forest adjacent to protected land
- Forests on both sides of tributary stream
- Forest which include nontidal wetlands and buffers
- Forests within Scenic River watershed (Severn River)
- Forests within Patuxent River Primary Management Area
- Forests including Heritage sites and wetlands of Special State Concern

PC:lc



William Donald Schaefer
Governor

Maryland Department of Natural Resources
Tawes State Office Building
Fish, Heritage and Wildlife Administration
580 Taylor Avenue
Annapolis, Maryland 21401

Torrey C. Brown, M.D.
Secretary

May 2, 1994

Mr. Michael Klebasko
McCarthy & Associates
14458 Old Mill Road #201
Upper Marlboro, MD 20772

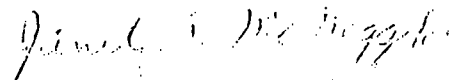
RE: Woods Landing Section II, Little Magothy River, Anne
Arundel County

Dear Mr. Michael Klebasko:

This is in regards to the above referenced project. There are no
~~known Federal or State threatened or endangered~~ plant or wildlife
species present at this project site.

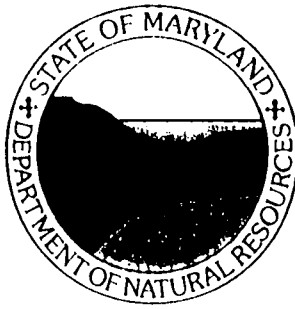
The forested areas on the project site are part of a contiguously
forested area approximately equal to or greater than 100 acres in
size. The conservation of these forested areas within the Critical
Area, which may be utilized as breeding areas by Forest Interior
Dwelling Birds, must be addressed by the proposed project
development plan. Contact Glenn Therres of the Wildlife Division
at (410) 827-8612 for technical assistance.

Sincerely,


Janet S. McKegg, Director
Natural Heritage Program

JM:cs

cc: Cynthia Sibrel
Glenn Therres
Penny Chalkley
Ren Serey
ER# 94419.AA



Parris N. Glendening
Governor

Maryland Department of Natural Resources

Wildlife Division
P.O. Box 68
Wye Mills, Maryland 21679
July 28, 1995

John R. Griffin
Secretary

Ronald N. Young
Deputy Secretary

Milt McCarthy
McCarthy & Associates
14458 Old Mill Road, Suite 201
Upper Marlboro, MD 20772

RE: FIDS Conservation; Woods Landing II (AA Co., tax map 40, parcel 163)

Dear Mr. McCarthy:

Bird surveys conducted by two independent observers (David W. Holmes, John Canoles) during 1995 indicate that Forest Interior Dwelling Bird (FIDS) habitat, as defined in Critical Area Guidance Paper No. 1, does not occur on the above property. These more recent findings supersede those of Sue A. Ricciardi during 1994.

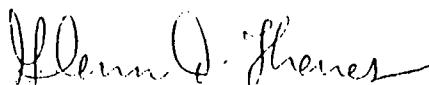
Consequently, no FIDS conservation measures are necessary on the property. However, to help maintain habitat for other forest wildlife, including migratory stopover habitat for FIDS, please consider the following:

- (1) Minimize forest clearing to the footprint of the homes and to that which is absolutely necessary for access roads and parking lots.
- (2) Retain as a large a contiguous block of forest as possible, particularly along the northwest section of the parcel and along the Little Magothy River.
- (3) Avoid construction during May-August, the breeding season for most forest nesting birds.
- (4) Retain or create wildlife corridors that maintain connectivity between the remaining forest and habitats on adjacent properties. For example, maintain forest corridors that connect with forest habitat along the southwest and east boundaries of the property.

Woods Landing II letter
July 28, 1995
page 2

Thank you for considering these recommendations. For additional assistance, please feel free to contact me or James M. McCann.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn D. Therres".

Glenn D. Therres, Supervisor
Wildlife Diversity Program

WOODSLDG. LTR

cc: Richard A. DeTar
Ren Serey
Claudia Jones
James M. McCann

On May 9, 1994, McCarthy and Associates, Inc. conducted a submerged aquatic vegetation (SAV) survey along the Woods Landing, Section II shoreline, located on the Little Magothy River, in Anne Arundel County, Maryland (Figure 1). Ms. Claudia Jones of the Critical Area Commission was also present during the survey. The survey was conducted by the following methods: (1) visual observation of shallow water areas, and (2) raking the substrate with a bow rake to verify the presence or absence of SAV along the Woods Landing shoreline. The survey was done by wading in the shallow water areas. Over 150 rakes were done.

In the shallow water areas, SAV bed densities were visually determined using the following density scale described in Orth et al. (1993):

<u>Density Class</u>	<u>Percent Coverage</u>
Very Sparse	0-10%
Sparse	10-40%
Moderate	40-70%
Dense	70-100%

For deeper areas (greater than one foot in depth) where water clarity was poor, the bed densities were subjectively determined based on the amount of SAV contained in each rake sample.

Historical SAV Survey Data

We reviewed the historical SAV surveys (Orth et al., 1985-1987; 1990-1993) for evidence of SAV in the project area. None of the surveys mapped SAV as occurring along the Woods Landing shoreline, or within the Little Magothy River (Figures 2 through 8).

SAV Survey Results

The survey revealed the presence of horned pondweed (Zannichellia palustris), along most of the shoreline (Figure 9). While SAV density was variable, the densest SAV beds are located along the southwestern shoreline, where mean water depths are less than 1.0 feet below mean low water (MLW). Water clarity was excellent in the shallow water, and the SAV was easily observed. A sparse to moderately dense area of SAV was also located along the eastern shoreline, in front of the existing tidal marsh. However, the channelward limits of the SAV was not determined, because the soft, mucky substrate made access impossible.

The sparsest SAV is located along the northern shoreline where patchy, individual plants were found. Offshore depths in this area increased quickly to greater than 2.0 feet below MLW. Although the substrate in this area was vegetated primarily by macroalgae, individual, SAV plants were found as well.

However, actual SAV beds were not located in this area and no SAV was located beyond 3 feet below MLW. This section of the shoreline is subject to stronger wave and tidal action, which probably prevents establishment of large SAV beds.

In conclusion, the densest SAV beds are found in the shallow, protected areas of the Little Magothy River around the Woods Landing shoreline. Although SAV was also located in other shoreline areas, its density is sparse and limited to patchy, individual plants.

References Cited

- Orth, R.J., J.F. Nowak, G.F. Anderson, and J.R. Whiting. 1993. Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and Tributaries and Chincoteague Bay - 1992. Final Report Submitted to: U.S. Environmental Protection Agency, Chesapeake Bay Program Office, Annapolis, Maryland. 268 pp.
- Orth, R.J. Simons, R. Allaire, V. Carter, L. Hindman, K. Moore, and N. Rybicki. 1985. Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and Tributaries. 1984. Funded by: NOAA Grant No. NA-83-AA-D-C2408. 155 pp.
- Orth, R.J. Simons, V. Carter, L. Hindman, S. Hodges, K. Moore, N. Rybicki. 1986. Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and tributaries - 1986. Funded by: Maryland Department of Natural Resources (RWMD931468-01-0). 296 pp.
- Orth, R.J. Simons, J. Capelli, V. Carter, A. Frisch, L. Hindman, S. Hodges, K. Moore, and Nu. Rybicki. 1987. Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and tributaries and Chincoteague Bay - 1986. Final Report. 247 pp.
- Orth, R.J. and J.F. Nowak. 1990. Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and tributaries and Chincoteague Bay - 1989. Final Report to the U.S. Environmental Protection Agency, Chesapeake Bay Program. 249 pp.
- Orth, R.J. and J.F. Nowak, A.A. Frisch, K.P. Riley, and J.R. Whiting. 1991. Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and tributaries and Chincoteague Bay - 1990. Final Report to the U.S. Environmental Protection Agency, Chesapeake Bay Program. 261 pp.
- Orth, R.J., J.F. Nowak, G.F. Anderson, K.P. Riley, and J.R. Whiting. 1992. Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and Chincoteague Bay - 1991. Final Report to the U.S. Environmental Protection Agency, Chesapeake Bay Program. 268 pp.

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779-95

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MAY 6 1997

CHESAPEAKE BAY
CRITICAL AREA COMMISSION
IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY, MARYLAND

PETITION OF WOODS LANDING
COMMUNITY SERVICE
ASSOCIATION, INC.

Ann Atkinson, President
494 Fawn's Walk
Annapolis, Maryland 21401

and

HOWARD and PAMELA HALE
582 Fox Paw Drive
Annapolis, Maryland 21401

and

ALBERT and BETSY KULLE
496 Fawn's Walk
Annapolis, Maryland 21401
Annapolis, MD 21401

FOR JUDICIAL REVIEW OF THE
DECISION OF THE ANNE ARUNDEL
COUNTY BOARD OF APPEALS

Case No. BA 44-96A
Arundel Center
44 Calvert Street, Room 102
Annapolis, Maryland 21401

IN THE CASE OF THE APPEAL OF
WOODS LANDING COMMUNITY
ASSOCIATION, INC., et. al.,
from a Decision of Planning and Code
Enforcement

BOARD OF APPEALS
RECEIVED
APR 21 1997

BY _____

Case No. C-97-36904 AA

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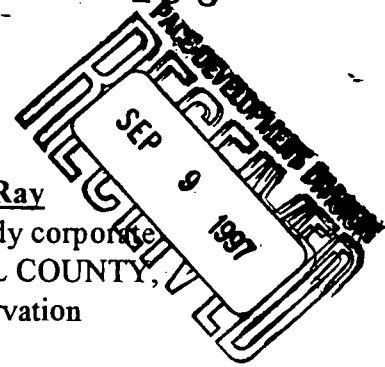
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BOOK 8007 PAGE 496

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS



CRITICAL AREA COMMISSION
CHESAPEAKE-BAY
CRITICAL AREA COMMISSION

DECLARATION OF COVENANTS, CONDITIONS AND

RESTRICTIONS, is made this 2nd day of July, 1997, by The Al-Ray Corporation, a body corporate, and Super-Concrete Corporation, a body corporate (hereinafter collectively referred to as "Declarant") TO ANNE ARUNDEL COUNTY, MARYLAND (hereinafter called the "County") in order to create a conservation property.

WHEREAS, the Declarants are the owners of a tract or parcel of land, containing 181.634 acres of land, more or less, of which is more particularly described in a deed from Tudor Jones and Hobson Jones to The Al-Ray Corporation, a body corporate, and Super-Concrete Corporation, a body corporate, dated April 26, 1974 and recorded among the Land Records of Anne Arundel County in Liber 2670, Folio 592 of which 40.939 acres are described and shown on Exhibit A, attached hereto and made a part hereof, and are subject to the covenants, conditions and restrictions set forth below; hereinafter called "Conservation Property" and,

WHEREAS, Woods Landing No. 2 Join Venture, the Developer of the Property known as "Woods Landing, Section Two" recorded in Plat Book 187, Pages 32, 33, 34 and 35 is removing approximately 8.43 acres of woodlands which needs to be replaced at one and one-half (1-1/2) times ratio equaling 12.6450 acres; and the Developer of the property known as "Hickory Point, Lots 1R, 2R, and 4R," recorded in Plat Book 145, Page 1, will remove 3.150 acres of woodlands; and the Developer of "Boulevard Park" recorded in Plat Book 177, Page 29 will remove 2.280 acres of woodlands; and the developer of "Robinson Landing Ridge," will remove 0.45 acres of woodlands which needs to be replaced at one and one-half (1-1/2) times ratio equaling 0.675 acres of woodlands; and

IMP FD SURE \$ 2.00
PROPERTY 20.00
REPLANT 22.00
REPT # 3131
BIR # 612
02:02 PM

WHEREAS, the Conservation Property is located in the Critical Area as defined in Article 21, Title 2 of the Anne Arundel County Code;

WHEREAS, the creation of the conservation property will benefit the citizens of the County and, therefore, the Declarant desires to grant the County the right to enforce the covenants, conditions and restrictions for the conservation property established under this Declaration.

NOW, THEREFORE, WITNESSETH: In consideration of the premises and the sum of One Dollar (\$1.00) and, other good and valuable consideration, the receipt whereof is hereby acknowledged, the Declarant does hereby establish the covenants, conditions and restrictions hereafter set forth to create a conservation property of the nature and character and to the extent hereinafter expressed to be and constitute a servitude upon the Property, which estate, interest, easements and servitude will result from the restrictions hereby imposed upon the use of the Conservation Property of the Declarant and to that end for the purpose of accomplishing the intent hereof, the Declarant covenants on behalf of itself and/or its personal representatives, legal representatives, successors and

assigns, as applicable, to do so and refrain from doing upon the Conservation Property, the various acts hereinafter mentioned, it being hereby agreed and expressed that the doing and the refraining from said act, and each thereof, upon the Conservation Property, is and will be for the benefit of the Declarant and the County.

The restrictions hereby imposed upon the Conservation Property and the acts which the Declarant so covenants to do and refrain from doing upon the Conservation Property in connection therewith are as follows:

1. No construction or alteration of residential, commercial, industrial, or other structures of any kind will be placed or erected upon the Conservation Property or any use in connection therewith shall be made of the Conservation Property.

2. No cutting or removing of vegetation or grading, filling or other activities shall be permitted upon the Conservation Property except as permitted under a Forest Management Plan or a Reforestation Plan approved by the County.

3. The general topography of the landscape of the Conservation Property shall be maintained in its present condition and no excavation or topographic changes shall be made.

TO HAVE AND TO HOLD unto the County, its successors, legal representatives, and assigns, forever; subject, however, to the right of the County to terminate such estate, interest, easements and servitude hereby granted upon the execution of an instrument and recordation thereof among the Land Records of Anne Arundel County, Maryland declaring that the estate, interest, easements and servitude created under this Declaration is terminated and no longer in force and effect.

The County is hereby granted the right to enforce this Declaration and the covenants, conditions and restrictions set forth herein.

WITNESS the hand and seal of the Declarant on the day hereinafter first written.

ATTEST/WITNESS:

Chris Ireland

Richard Fisher

THE AL-RAY CORPORATION

By: Richard E. Hays (SEAL)
President

SUPER-CONCRETE CORPORATION

By: John A. Hays (SEAL)
President

STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY, that on this 2nd day of July, 1997, before me the subscribed, a Notary Public in and for the State and County Officer personally appeared Samuel Meyer, the President of The Al-Ray Corporation, a body corporate, and he acknowledged the foregoing Declaration to be the act of said body corporate.

IN WITNESS WHERE OF, I have hereunto set my hand and official seal.

Barbara W. Gross
Notary Public

My Commission Expires: 2/28/2001

STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY, that on this 2nd day of July, 1997, before me the subscribed, a Notary Public in and for the State and County Officer personally appeared Samuel Meyer, the President of Super-Concrete Corporation, a body corporate, and he acknowledged the foregoing Declaration to be the act of said body corporate.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Barbara W. Gross
Notary Public

My Commission Expires: 2/28/2001

APPROVED AND ACCEPTED THIS
5th DAY OF August, 1997

ANNE ARUNDEL COUNTY, MARYLAND

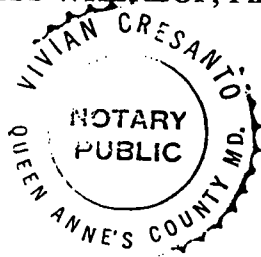
BY: [Signature] (SEAL)
Thomas C. Andrews
for John G. Gary
County Executive

STATE OF MARYLAND:
COUNTY OF ~~ANNE ARUNDEL~~ ST

BOOK 8007 PAGE 499

I HEREBY CERTIFY, that on this 5 day of August, 1997, before me, the subscriber, a Notary Public in and for the State and County Officer personally appeared **Thomas C. Andrews**, for John G. Gary, Jr., County Executive of Anne Arundel County, Maryland, a political subdivision of the State of Maryland, and acknowledged the foregoing Declaration to be the act of said body corporate.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



NOTARY SEAL

Vivian Cresanto
NOTARY PUBLIC

My Commission expires:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

MY COMMISSION EXPIRES:
5/17/99

[Signature]
Office of Law

8/1/97
Date

303 NAJOLES ROAD, SUITE 114
MILLERSVILLE, MARYLAND 21108-2506

Phone: 410-987-6901

Fax: 410-987-0589

May 22, 1997

**DESCRIPTION OF 40.939 ACRES OF LAND, MORE OR LESS
CONSERVATION PROPERTY
PART OF THE PROPERTY OF AL-RAY CORPORATION AND
SUPER CONCRETE CORPORATION
FIRST DISTRICT
ANNE ARUNDEL COUNTY, MARYLAND**

BEGINNING FOR THE SAME at a point along the East bank of the Patuxent River, and at a point marking the beginning of the North 02 degrees 23 minutes 50 seconds East 274.42 foot line of the conveyance from Tudor Jones and Hobson Jones to the AL-RAY Corporation and Super Concrete Corporation by deed dated April 26, 1974 and recorded among the Land Records of Anne Arundel County, Maryland in Liber 2670, Page 592; thence leaving said point of beginning so fixed and running with and binding along the aforesaid East bank of the Patuxent River,

- 1) North 02 degrees 23 minutes 50 seconds East 274.42 feet,
- 2) North 08 degrees 45 minutes 40 seconds East 337.00 feet,
- 3) North 13 degrees 15 minutes 30 seconds East 268.84 feet,
- 4) North 23 degrees 18 minutes 00 seconds East 344.68 feet,
- 5) North 20 degrees 19 minutes 40 seconds East 262.96 feet,
- 6) North 14 degrees 02 minutes 50 seconds East 197.17 feet,
- 7) North 05 degrees 05 minutes 20 seconds East 111.72 feet,
- 8) North 08 degrees 20 minutes 10 seconds East 114.85 feet,
- 9) North 14 degrees 57 minutes 10 seconds East 214.65 feet,

**EXHIBIT A
(CONSERVATION PROPERTY)**

**DESCRIPTION OF 40.939 ACRES OF LAND, MORE OR LESS
CONSERVATION PROPERTY
PART OF PROPERTY OF AL-RAY CORPORATION AND
SUPER CONCRETE CORPORATION**

May 22, 1997

Page 2

- 10) North 13 degrees 51 minutes 20 seconds East 368.45 feet,
- 11) North 19 degrees 42 minutes 10 seconds East 139.93 feet,
- 12) North 13 degrees 43 minutes 30 seconds East 251.35 feet,
- 13) North 07 degrees 34 minutes 10 seconds East 180.46 feet,
- 14) North 07 degrees 18 minutes 40 seconds East 239.33 feet,
- 15) North 26 degrees 51 minutes 40 seconds East 153.73 feet,
- 16) North 30 degrees 17 minutes 10 seconds East 253.15 feet,
- 17) North 33 degrees 13 minutes 00 seconds East 104.95 feet, thence running with and binding along part of the North 88 degrees 56 minutes 10 seconds East 2139.48 foot line of the aforementioned conveyance,
- 18) North 88 degrees 56 minutes 10 seconds East 494.00 feet, thence running across a portion of the whole tract for purpose of this conservation easement,
- 19) South 12 degrees 30 minutes 45 seconds West 446.57 feet,
- 20) South 55 degrees 56 minutes 00 seconds West 157.76 feet,
- 21) South 07 degrees 02 minutes 50 seconds West 237.35 feet,
- 22) South 65 degrees 14 minutes 35 seconds West 117.05 feet,
- 23) South 21 degrees 43 minutes 51 seconds West 1,057.67 feet,
- 24) South 28 degrees 23 minutes 44 seconds West 441.04 feet,
- 25) South 00 degrees 08 minutes 44 seconds East 717.55 feet,

**EXHIBIT A
(CONSERVATION PROPERTY)**

**DESCRIPTION OF 40.939 ACRES OF LAND, MORE OR LESS
CONSERVATION PROPERTY
PART OF PROPERTY OF AL-RAY CORPORATION AND
SUPER CONCRETE CORPORATION**

May 22, 1997

Page 3

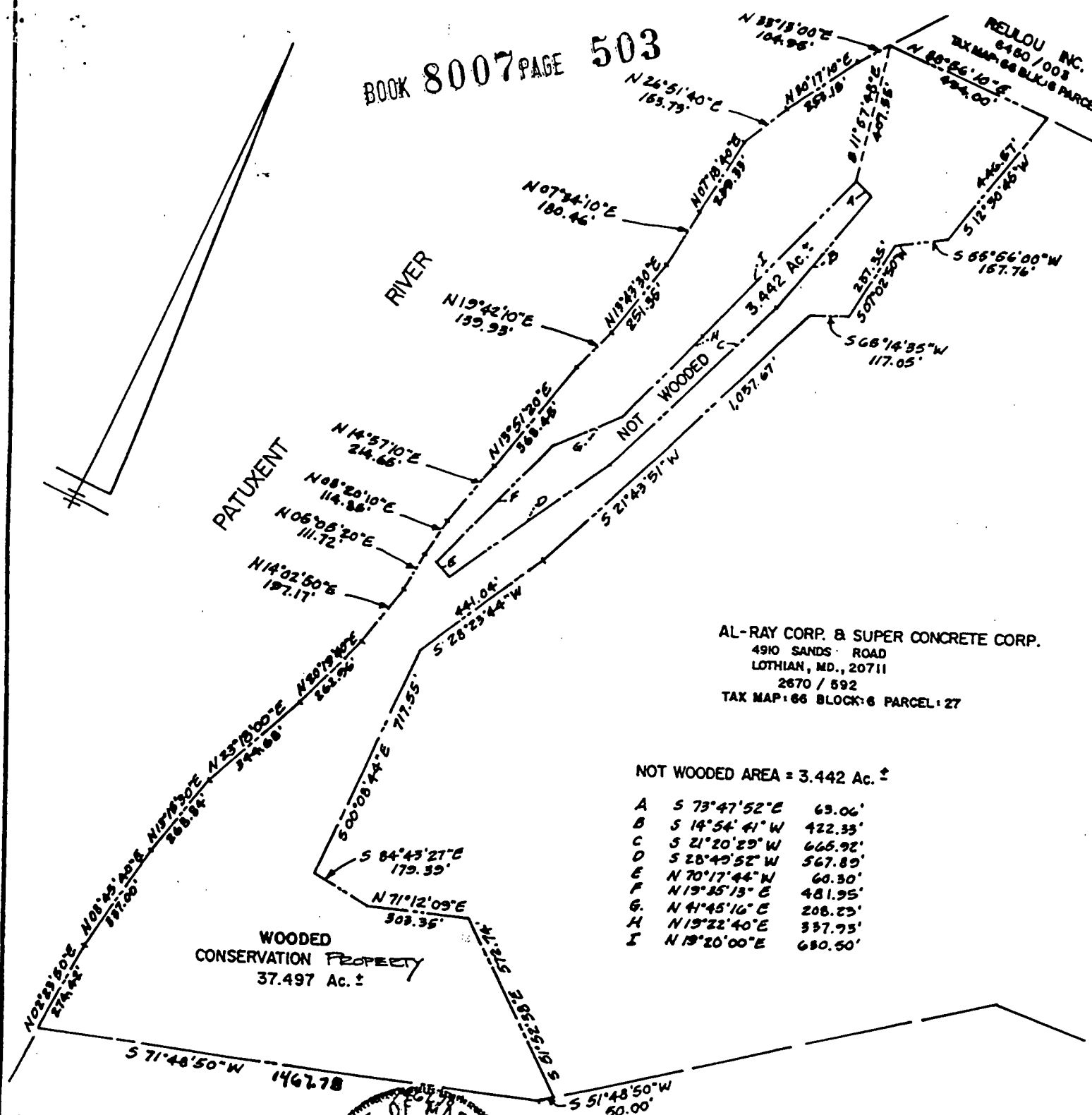
- 26) South 84 degrees 43 minutes 27 seconds East 179.39 feet,
- 27) North 71 degrees 12 minutes 09 seconds East 303.35 feet,
- 28) South 51 degrees 52 minutes 38 seconds East 572.74 feet, thence running with and binding along part of the Southmost boundary of the aforementioned conveyance,
- 29) South 51 degrees 48 minutes 50 seconds West 50.00 feet, and
- 30) South 71 degrees 48 minutes 50 seconds West 1,467.78 feet to the point of beginning.

Containing in all 40.939 acres of land, more or less.

Being and intended to be a conservation property containing 40.939 acres of land more or less, 37.497 acres of which are wooded.

Being part of that land conveyed from Tudor Jones and Hobson Jones to the AL-RAY Corporation, and Super Concrete Corporation by deed dated April 26, 1974 and recorded among the Land Records of Anne Arundel County, Maryland in Liber 2670, Folio 592.

REILLOU INC.
6480 / 008
TAX MAP: 66 BLOCK: 8 PARCEL: 1



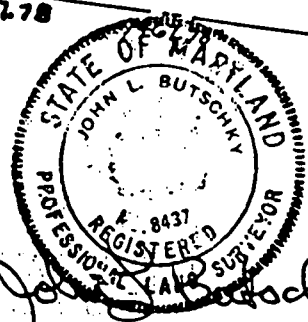
AL-RAY CORP. & SUPER CONCRETE CORP.
4910 SANDS ROAD
LOTHIAN, MD., 20711
2670 / 592
TAX MAP: 66 BLOCK: 6 PARCEL: 27

NOT WOODED AREA = 3.442 Ac. ±

A	S 73° 47' 52\"E	63.06'
B	S 14° 54' 41\"W	422.33'
C	S 21° 20' 29\"W	666.92'
D	S 28° 49' 52\"W	567.89'
E	N 70° 17' 44\"N	60.30'
F	N 13° 35' 13\"E	481.95'
G	N 41° 45' 16\"E	208.23'
H	N 19° 22' 40\"E	337.75'
I	N 19° 20' 00\"E	680.50'

WOODED
CONSERVATION PROPERTY
37.497 Ac. ±

ANAREX, INC.
ENGINEERS SURVEYORS
EXPEDITERS PLANNERS
303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE, MD. 21108-2506
PHONE: (410) 987-6901



LOUISE BACHRACH & PHYLISS HART
6368 / 666
TAX MAP: 66 BLOCK: 12 PARCEL: 11

John L. Butschky 4/22/97

DRAWN BY: D.E.T. TRACED BY: _____ CHECKED BY: R.W.L. DRAWING NO: 1 of 1	ANNE ARUNDEL COUNTY PLANNING AND CODE ENFORCEMENT	SCALE: 1" = 400' DATE: MAY, 1997 PROJECT NO. _____	REVISIONS <table border="1"> <tr> <th>DATE</th> <th>BY</th> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </table>		DATE	BY				
	DATE	BY								
CONSERVATION PROPERTY AL-RAY CORP., & SUPER CONC. CORP. Property	APPROVED _____ Chief Engineer									
1st DISTRICT A.A. CO., MD										

JOINDER AND CONSENT OF LENDER IN

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Calvert Bank and Trust Company, a body corporate, as the beneficiary under a Deed of Trust dated June 21, 1985 and recorded among the Land Records of Anne Arundel County in Liber 3909, folio 875, which Deed of Trust covers a portion of the property described in the within Declaration of Covenants, Conditions and Restrictions (the "Declaration") by The Al-Ray Corporation, et al. to Anne Arundel County, Maryland, hereby joins in the aforesaid Declaration for the sole purpose of consenting thereto and of subjecting and subordinating the aforesaid Deed of Trust and its interest in the property therein described to the covenants, conditions and restrictions set forth in the Declaration.

ATTEST:

CALVERT BANK AND TRUST COMPANY

Jim McManus
Vice President & Asst. Secretary

By: 12 B 3 (SEAL)
Harry B. Zinn
Executive Vice President

STATE OF MARYLAND, COUNTY OF Calvert, to wit:

I HEREBY CERTIFY, that on this 1st day of July, 1997, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Harry B. Zinn, the Executive Vice President of Calvert Bank and Trust Company, a body corporate, and that he as such Exec. Vice Pres., being authorized so to do, executed the foregoing Joinder and Consent of Lender for the purposes therein contained, by signing in my presence, the name of said body corporate by himself as such Exec. Vice Pres.

AS WITNESS my hand and notarial seal.

Wanda L. Hardesty
Notary Public
WANDA L. HARDESTY
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 4, 2001

My commission expires:

C:STJOHN\WOODLAND.ING\AL-RAY.JDR

COMMONWEALTH LAND TITLE
INSURANCE COMPANY
31 Light Street
Suite 500
Baltimore, Maryland 21202



ANNE
ARUNDEL
COUNTY,
MARYLAND

156-91

Woods Landing II
or
Wedge's Edge

CURRENT PLANNING
2664 RIVA ROAD, P.O. BOX 6675, MS 6301
ANNAPOLIS, MARYLAND 21401

DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

December 4, 1997

RECEIVED

DEC 9 1997

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Lisa A. Hoerger
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

Re: Woods Landing II Reforestation

Dear Ms. Hoerger,

Clearing for the Woods Landing Section II development required 8.43 acres of forest removal. That was more than 20% of the forest on site, but less than 30%. Replacement had to be at one and one-half times or 12.645 acres.

The applicant posted a reforestation bond for \$330,321.60 to have the grading permit released. In the meantime, he was pursuing various options for reforestation or easements.

The developer had one year from the August 1996 agreement date to find a site. No site for reforestation was found by the developer and the County did not have a site. Several sites were proposed to be placed under easement which had existing forest in the Critical Area, but which were not protected from allowable development activities.

The off-site location accepted by the County is adjacent to the Patuxent River, a river which is subject to the Patuxent River Policy Plan calling for special protection measures within the Primary Management Area.

The County required that the 12.645 acre obligation for Woods Landing be at 2 to 1 or 25.29 acres of existing forest to be placed under a perpetual easement.

Enclosed is a copy of the recorded easement and Exhibit. Also, I am sending along the Final Development Plan and the Grading Plan.

There is a small amount of clearing still allowed - approximately 18,000 sq.ft. - which will have to meet its reforestation obligation at that time.

Should you have any questions, please call me at 410-222-7459.

Sincerely,

Penny Chalkley

Penny Chalkley
Development Division

PC:lc

Enclosure

cc: Joseph Elbrich
Lori Allen
Edward St. John
Anarex, Inc.



Printed on
Recycled Paper


PETITION FOR APPEAL

Petitioners, Woods Landing Community Service Association, Inc., Howard and Pamela Hale and Albert and Betsy Kulle ("Petitioners"), by their attorneys, Richard A. DeTar and Miles & Stockbridge, P.C., pursuant to Maryland Rule 7-202, hereby file their petition for appeal, and state the following:

1. Petitioners respectfully request that the Clerk docket this appeal and that the Circuit Court undertake judicial review of the decision of the Anne Arundel County Board of Appeals dated March 17, 1997 (the "Decision") which granted final site plan and subdivision approval for the Applicant, Woods Landing No. II Joint Venture, a copy of which is attached hereto as Exhibit A.
2. Petitioners participated in the agency proceedings before the Board of Appeals in Appeal No. BA 44-96A.
3. Petitioners seek reversal of the Decision and a stay of the final site plan and subdivision approval to prevent the Applicant, Woods Landing No. II Joint Venture, from causing irreparable harm to environmentally protected land and from violating the applicable Anne Arundel County Zoning Ordinance pending final disposition of the appeal.
4. The grounds for the Petitioners' Appeal are, *inter alia*, that the decision granting final site plan and subdivision approval of Woods Landing No. II Joint Venture is in direct violation of the applicable Anne Arundel County Zoning Ordinance, is contrary to the critical area laws of the State of Maryland, is arbitrary and capricious, is

based upon improper findings of fact, and is not supported by competent and material evidence.

Respectfully submitted,



RICHARD A. DeTAR
Miles & Stockbridge, P.C.
101 Bay Street
Easton, MD 21601
(410) 822-5280

Attorneys for Petitioners, Woods Landing
Community Service Association, Inc.,
Howard and Pamela Hale, and Albert
and Betsy Kulle

ANNE ARUNDEL COUNTY
Annapolis, Maryland
Department of Planning and Code Enforcement
Development Division
INTER-OFFICE CORRESPONDENCE
May 8, 1996

TO: Lori Allen

FROM: Penny Chalkley

SUBJECT: WOODS LANDING II Revised
Final P1995-221

1. They have worked out a temporal restriction note and it is #1 under General Notes. (See attached).
2. The conservation easement has been forwarded to the Law Office. They plan to record it simultaneously with the plat.
3. There is a reference on the plat to the pedestrian access and it is now not shown within the easement.
4. They have made the easement lines clearer on the plat.
5. The new FCP indicates the difference in sidewalks. The 5' easement refers to the portion of the sidewalk across the lots.
6. Plat

The pedestrian easement has been freed of the conservation easement.

The exhibit was corrected (removed pedestrian easement) and sent to the Law Office. The Liber/Folio will be recorded when the plat is and the numbers filled in.

The temporal restriction note is on the plat.

7. Their Corps permit 92-60674-10 has been reauthorized and is valid until December 31, 1999.
8. They sent a copy of the covenants.

Article V addresses Critical Area compliance. However, in addition to the expanded buffer and the open space, there is also no disturbance within the conservation easement. That is no disturbance in the easement, not just the

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MAY 16 1996

**CHESAPEAKE BAY
CRITICAL AREA
COMMISSION**

recreation portion. There was never discussion of vehicular access to the community pier. Unless the observation deck is part of the pedestrian access easement, it will not be allowed.

Also the Committee cannot approve additional impervious coverage (Section 3) - slabs, fences in the easement, sidewalks, curbs, patios, porches, etc.

The Committee is not the approving authority for tree removal in conservation areas - Section 9 (I).

There shall be no fences in the Conservation Easement - Section 11.

If they can change the covenants, they have addressed my other outstanding issues.

PC:lc

Attachment

cc: Mark White, Anarex - Fax #987-6901

ANNE ARUNDEL COUNTY

Annapolis, Maryland

Department of Planning and Code Enforcement

Development Division

INTER-OFFICE CORRESPONDENCE


April 25, 1996

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APR 29 1996

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

TO: Lori Allen

FROM: Penny Chalkley SUBJECT: WOODS LANDING SECTION II
Revised Final P#1995-221

A resubmittal was made directly to me April 18, 1996. An expedited review has been required with comments due by April 26.

- *1. The plat does not have any note that all clearing will be completed by May 1997, if that is their intent. If so, put that note on the plat or refer to the construction timetable on file with PACE (one sent to DNR) - we'll need a copy - or use the flexible note indicated previously. The Critical Area Commission was - and still is - particularly interested in the temporal restriction to avoid clearing for the first year from May through July. Regina Esslinger, Ren Serey and I want some kind of temporal note just in case the clearing is not completed before May 1997 and the next breeding season begins.
- *2. The easement was submitted. There was no deed attached. Also the pedestrian access is still shaded as part of the easement on the exhibit - If it is included in the acreage under easement, the acreage must be readjusted by 2500 sq.ft.

The plat is still not clear in some easement areas (if you don't have the exhibit to guide you or the FDP, an individual cannot connect the easement lines correctly).

- adjacent to the cul-de-sac
- by Lot 24
- between Lots 6 and 7
- next to Lot 63
- next to Lot 25
- next to Lot 32
- next to Lot 99
- Also the plat shows the ||| symbol on the pedestrian easement (water side). It has been removed from the FDP. Please remove from plat 3 and adjust the figures accordingly.

I do not have a copy of the pedestrian access easement. If it specifically

references no clearing except for 10' wide, they could put the remainder under the forest easement. It seems the whole purpose of making it 50 x 50 instead of 10 x 50 would be to allow it to be used. However, no clearing is shown on the FDP so it can't be cleared.

On the FDP, they have the easement symbol on either side of the trail, but it isn't shown that way on the exhibit or plat (change from February submittal). Which is it? Is any clearing proposed? All easement areas have to match.

Sheet 3 of the FDP has the ||| symbol in two places behind units 41-48. This will be confusing even if it is shown only on way on the plat and easement. Use the one on the plat/exhibit - closer to the units and have the FDP the same.

3. Some additional trails are shown now. No clearing is permitted for them.
- *4. What is the 5' Pedestrian Easement now shown? What are the new sidewalks versus old? In their new figures, the public road calculations increased by 478 sq.ft. Is this accounted for by the increase to 24 ft. of paving in the cul-de-sac? The sidewalks increased by 920 sq.ft. but it's really difficult to determine what is new.
5. All grading and building permits can follow only what is on the Final Development Plan, including house shape, setbacks, roof leader installation, etc. No adjustments can be allowed at permit because they are so close to 15% impervious and clearing wasn't divided up, so there is no flexibility provided and this FDP governs.
- *6. Plat
 - Correct easement (pedestrian versus forest since ||| symbol is on the area instead of around it).
 - They need to correct the exhibit and provide the deed so it can be processed. Then note Liber/Folio.
 - Still need note about temporal restriction to satisfy CBCAC and DNR.
7. At Grading Permit, they will need to
 - address reforestation (offsite or fee at 1 ½ times)
 - Provide a copy of the reauthorized wetlands permit from the Corps. I do

have their wetlands license from the State 92-0669 good through December 31, 1997.

- Stake LOD and buffer - label appropriately.
 - Special protection measures for large trees - protection through critical root zone or special techniques as recommended by qualified arborist/forester.
- *8. Are they using the old Woods Landing covenants or their own covenants? I'd like to look at the wording as it relates to Critical Area since I've never seen them so that I can check as to whether any of the covenants conflict with plat or FDP restrictions.
- *9. Items to be addressed.

PC:lc

cc: CBCAC/
woodsii.96/penny

ANNE ARUNDEL COUNTY

Annapolis, Maryland

Department of Planning and Code Enforcement

Development Division

INTER-OFFICE CORRESPONDENCE

March 26, 1996

TO: Lori Allen

FROM: Penny Chalkley *PC*SUBJECT: WOODS LANDING REVISED FINAL
P#1995-221

- *1. I do not have a copy of the construction schedule as referenced. If they do not adhere to the starting date and the schedule, the September 1996 date is not applicable. They should allow themselves some flexibility as in:

No clearing of forest during May - August. However, once the forest habitat is cleared in accordance with the FDP, there will be no temporal restriction on activities from May - August.

Since it is already almost April, I am not sure that the time frame they indicate is applicable. If the forest is cleared from September through May, it won't apply, but if the deal falls through, there is protection for the birds during the nesting season.

RECEIVED

MAR 1 1996

2. They have resubmitted the Critical Area report.

It now shows the site configuration on maps.

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

- *3. The plat essentially indicates that they will follow the FDP and has totals for townhouses, steps, slabs, sidewalks and driveways. There is no chance of ending up with any change in unit type or driveway is there? Since they are right at 14.9%, even changing a few could throw off their figures. If they won't change at all from the FDP, then they don't have to list the lots individually - but at permit they will have to be just what's on the FDP. Please clarify.
- *4. They corrected the easement to remove non-forested areas so it includes existing forest only. Areas of utility and storm drain easements, and forest snippets were not included even though they include forest and are not proposed to be cleared. That's why 20 acres are not under easement.

The 40 scale plan does not include an area of forest between the nontidal wetland, the tidal wetland and Revell Downs. The easement exhibit does not include it

either. However, the plat does include it. The same with several areas of tidal wetlands shown on the plat under easement but not on the exhibit. The easement area on Sheet 3 is not clear in the tidal wetland area. For protection of the resource, that's good and if it wasn't factored into the 18.05, then it doesn't confuse the conservation figures so they can leave it on the plat.

A small area on plat 3 of 4 and on Sheet 3 of 4 cannot be under easement for the pier landing, steps, etc. The whole 50 x 50 area should be out of the easement. The forest easement can't have another easement over it that could conflict - pedestrian easement.

In some areas the buffer line on the plat and on the 40' scale are a little different. They are within the easement, so I don't have a problem.

The exhibit does have bearings and distance on all but the three sides of the pedestrian easement.

The easement line on Plat 3 is hard to read.

The only change to the exhibit, plat and plans for the easement is to remove the pedestrian easement. Also on Sheet 3 make easement area the same as the exhibit. Plat can stay the same, if they want.

Once that is done, they can process the easement with the original and a copy of the deed.

5. They are using the tidal wetland line established by McCarthy and Associates and verified through their Corps permit for the fishing pier. ~~That alters their buffer a little in regard to the infiltration area near unit 41. The area is out of the buffer now.~~
6. ~~They corrected the buffer in the area affecting units 6 and 7 (now 8 and 7).~~
7. Plan is back to showing large trees so special protection can be implemented with the GP. If they are looking at pruning and fertilizing, that should be done in accordance with any planned grading activities, if not well before.
- * 8. Plat
 - Reference Liber/Folio once the easement is recorded.
 - Note 10 - also within the Conservation Easement, which is sometimes greater than the buffer now that we have an exhibit.

- Have temporal restriction for FIDs relating to initial clearing.
- Remove pedestrian easement from conservation easement on Sheet 3, since it will have to be removed from the exhibit.
- What happened to the cluster/Open Space note that was on there? Section 2 is still indicated as "cluster townhouse lots".

PC:lc

cc: CBCAC - Regina Esslinger
DNR - Glen Therres

woodslan.96

Annapolis, Maryland

AA 156-91
779-95DATE TRANSMITTED: **2-27-96**

SUBDIVISION TRANSMITTAL

Process Type

Submitted

Project Type

Major Detail

☒ Subdivision Review Planner
☒ Engineering Review
☒ Traffic Review
☒ Utilities Review
☐ House Numbers/Street Names
☒ Environmental Review
☒ Soil Conservation District
☐ Health Department
☐ State Highway Administration
☐ Board of Education
☐ Fire Prevention Bureau
☐ Police
☒ Recreation and Parks
☐ Dept. of Natural Resources
☐ Md. Dept. of Environment
☐ Army Corps of Engineers

☐ State Planning
☐ Baltimore Gas & Electric Co.
☐ B G & E Marketing & Energy
☐ Bell Atlantic
☐ PAC/Environmental Programs
☐ Library
☐ Md. State Aviation Admin.
☐ Mass Transit Administration
☐ Law Office
☒ Archeological/Historical
☒ Landscape
☐ Forester
☐ Transportation
☐ Drafting
☐ Site Plan Review
☒ Other *Regime Exchange*

FROM: Dept. of Planning & Code Enforcement/Subdivision Application Center

SUBJECT: NAME: *Woods Landing SEC 2*

FORMERLY: _____

SUBDIVISION # *S 73-519*PROJECT # *P 95-221*

SITE PLAN REVIEW # _____

MINOR SUBDIVISION # _____

TAX MAP *40* BLOCK *18* PARCEL *163*200 SCALE *AA19* 600 SCALE *40* 1000 SCALE *17*Please review the plans of the above-mentioned project for *final* approval.Your comments are requested by *within* ~~noon on the business day of~~ *4-6 weeks*

A meeting will not be held.

A meeting will be held on _____ at _____
in this Office.This project will be reviewed at the weekly commercial site plan progress meeting on _____ at _____
CRITICAL AREA COMMISSION

RECEIVED

FEB 29 1996



Anarex, Inc.

Development Services

THE CONCOURSE

303 NAJOLES ROAD, SUITE 114
MILLERSVILLE, MARYLAND 21108-2506
Phone: 410-987-6901
Fax: 410-987-0589

February 26, 1996

Ms. Lori Allen
ANNE ARUNDEL COUNTY
Department of Planning and Code Enforcement
Environmental Division
Heritage Office Center
2664 Riva Road
Annapolis, Maryland 21401

Re: **Woods Landing**
Section Two
Sub #73-519, Proj #95-221

Dear Ms. Allen:

This letter addresses all agency comments of the review meeting held on January 13, 1996 and listed in the January 29, 1996 letter.

II. Discussion

1. Joe Elbrich has agreed that if no requirements was made or shown on the Section One Plat, off-site sidewalks would not be required.
2. The State wetland maps are very old and unreadable but we have shown their effect on the attached 1"=200' scale to be sent to Penny Chalkley. Most important however is the 1"=40' scale final development plan that shows tidal wetlands as determined by McCarthy & Associates, verified by the Corps of Engineers, and field located by us.

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FEB 27 1996

ANNE ARUNDEL COUNTY
DEPT. OF PLANNING &
CODE ENFORCEMENT

RECEIVED

FEB 29 1996

95-221
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 2

3.
 1. The turning radius provided by the 20-foot wide paving is adequate for a SU vehicle which is equivalent to a school bus.
 2. The site drainage behind the lots is such that adequate flow away from houses has been provided. All units which do not naturally drain to storm water management devices will be piped to them as shown on the plans.
 3. We have provided an additional study for the outfall agreed to and conclude that no extension should be required.
 4. We have provided Open Space, and easement area for access to the back of the lots.
4. Because of the adjacent utilities, storm water management area, and buffers, the sewer location as shown must remain.
5. The proposed pier, as most are, will be constructed from the water.
6. We are not required to place standard County details on the plans. Referencing the detail is sufficient.
7. A copy of the letter from Department of Natural Resources approving restrictions for construction until September, 1996 only is enclosed for your review.
8. Our attorney has confirmed that Section One and Section Two are separate communities, and will not share homeowners maintenance responsibilities. We will retain the name Woods Landing for identification purposes.
11. We have provided additional parking to prevent overflow parking into Section One.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 3

III. PACE/Planning/Lori Allen/January 16, 1996

- 11B. The setbacks shown on the plat have been established per a meeting with our office and Steve Callahan prior to the last submittal. The noted setbacks were a suggestion and the setbacks proposed will provide a more compatible situation for the townhouse layout shown.
- 11C. This subdivision does not require Open Space.
- 11h. We have shown on the final development plan all of the savable significant trees as requested.
- 11j. Our detail now shows a typical row Townhomes as requested.
- 11P. The highlighted pathway system delivered to you after the meeting should have resolved the sidewalk issue.

Joe Elbrich has agreed that no off-site sidewalk requirement will be needed.

- I. Joe Elbrich has requested Dr. Luckenback to perform the Phase 1 study on the area to be disturbed by a storm drain outfall behind Lots 16-24. We agreed to stake out the area at Dr. Luckenbacks request.

General Comments

- 1. The owner has signed the plat, and there are no financial institution involved.
- 2. The Health Department approval and signature will be provided prior to final plat approval as required.
- 3. We have corrected/and or added the additional information per the marked plats as required. They are being resubmitted herewith.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 4

4. The revised plats reflect the establishment of the lots as requested and the note has been omitted.
5. The waiver note has been provided.
6. The paid tax information will be provided prior to final approval.
7. The agreement information has been provided, with copies being submitted herewith.
8. A notation pertaining to the boundary survey has been provided.
9. The source of topography notation has been placed on the final development plan and public plans as required.
10. A Certificate of Title will be provided prior to plat approval.
11. All plans and plats now reflect the North American Datum 83 information.
12. We have provided adequate access around the lots. The lots which abut each other have a 5-foot access easement.
13. Clearing should not have been shown on any of the proposed mulched pathways. They will be constructed around the woody vegetation to prevent clearing.
14. Water and sewer are already allocated for 153 units and the owner has kept current with payments.
15. The project number has been provided on all the plans and plats.
16. The HOA document will be submitted and approved prior to plat approval.
17. A copy of the existing pedestrian easement is enclosed for your review. The easement is located in Open Space so it does not affect Section Two. Its establishment is basically to provide the Section One individuals access through it.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 5

B. PACE/Environmental/Penny Chalkley/ December 21, 1995

1. A copy of the most current Critical Area Report is enclosed.
2. We have received approval from Department of Natural Resources to place the restriction for construction on the property from May-August of this year only. A copy is enclosed for your review.
3. We have placed a notation on the plat that the maximum impervious average of 15% has been met.
4. We have revised the plans to show conservation easements only on the forested areas.
5. We will be providing bearings and distance for the conservation easements as required.
6. There are no easement areas on any tidal wetlands area. The state wetlands maps are very old and unreadable, but we have shown their effect on the attached 1"=200' scale. The final development plan shown the wetlands as determined by McCarthy & Associates, verified by the Corps, and field located by us.
8. We have verbal approval, but have not received the written authorization as of this submittal. We will forward it to you as soon as we received it.
9. We have revised the buffer lines accordingly, including the area noted.
10. We have clarified the impervious areas as requested. The total woodlands area shown has been revised to not include any tidal wetlands area.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 6

II. Plat

1. We have placed the temporal restriction notation on the plat.
2. The impervious areas have been clarified.
3. The correct tidal wetlands have been shown.
4. All the forest conservation easement have been shown in forested areas.
5. We have revised the buffer to be 25-feet not 50-feet.
6. Please clarify a plat note.
7. We have placed the non-tidal wetlands note on the plat as requested.
8. The conservation easement notation with Liber and Folio have been provided.
9. We have placed the buffer line criteria on the plat.
10. We have made all the necessary revisions/additions as indicated.
11. We have placed the significant trees to remain on the final development plan.
Protective measures to save these trees will be provided when the grading permits are applied for.

C. PACE/Engineering/Greg Stewart/January 11, 1996

A.

1. In our opinion the turning radius provided by the 20-foot wide paving is adequate for a SU vehicle which is equivalent to a school bus. An increase to a 24 wide lane is an unnecessary increase in the impervious area.
3. Joe Elbrich has agreed that if no requirement was made and shown on the Section One plat, off-site sidewalks will not be required.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 7

6. Rear yard drains have been provided for the units which do not drain towards the storm water management systems. They can not be located outside of the lot lines because of critical area restrictions.
7. We have provided water quality for all the impervious areas.
8. A detailed outfall study further downhill has been shown for the one outfall we agreed to do.

B. Final Design Issues

1. A highlighted plan was submitted to the planner which should have provided adequate pathways throughout our subdivision.
2. The trenches are located in the soil strata. The tests were performed prior to design and in certain circumstances we are not 5-foot below the bottom. However the 2-foot restriction between soil or water have been met. The water elevation are in the report, and we have added cleanout.
3. The grassed attenuation area is not impacting the buffer. We do not agree with the request for a structure.
4. The outfall statement has been provided, and the additional section has been provided.
5. Access behind Lot 41 can not be provided with any additional paving to improve turning movements.
6. We do not want to provide curbing because it complicates drainage to the grassed attenuation area.
7. The lowest floor elevation is above the flood elevation of 8.0-feet.
8. We have provided Open Space area or a 5-foot access easement around all the buildings as requested. The storm drainage pipes can not be located in these areas because of excessive clearing.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 8

9. We have provided additional spot elevation, which should clarify drainage.

10. We have provided all the pertinent information on the plans as required.

11 & 12. All agency comments have been addressed.

D. PACE/Traffic/Jane Elberti/January 11, 1996

2.

A. Joe Elbrich has agreed that if no requirement was made and shown on the Section One plat, off-site sidewalks are not required.

B. The pavement width as provided meet AASHTO specification for turning movements around the cul-de-sac.

3 & 4. The walkway system provided has been approved by the Planning Department to minimize unwanted impervious area.

5. We did not receive a marked up plan referring to the TCP.

7. Access behind Lot 41 can not be provided with any additional paving to improve turning movement. Vehicle can make the turn with minimal inconvenience.

E. PACE/Utilities/Vahid Tayebi/January 16, 1996

1. We have revised the sewer manhole location as requested.

2. The proposed sewer main in question is located in an easement. Because of adjacent utilities and storm water management and the presence of buffers and required clearances the location as shown must remain.

3. We have revised the manholes as requested.

4. We have revised the sewer and storm drain systems to alleviate the discrepancy noted.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 9

5. We have switched the water and sewer mains as requested.
6. We have omitted trees from the area, however, shrubs are still being provided.
7. We have provided your request.
8. The fire hydrants will be located entirely within the easements. They are shown on the plans much larger than they actually are with respect to the scale.
9. The enclosed marked plans have been corrected. These plans are being returned with a copy of the revised cost estimate for your review.

F. Soil Conservation District/Chris Maex/January 2, 1996

1. We have revised the limits of disturbance and sediment control measures to be outside of the buffers.
2. The buffer disturbance has been omitted.
3. We will not disturb the buffer.
4. We have shown the bottom elevations for the storm water management systems in the soil logs to clarify the soils present.
5. The outfall from the attenuation area is a 4-inch PVC drain to dewater the pond. There seems to be no accurate way to provide a detailed study for this drain.
6. Because of the limited area, slope, and required volume we can not raise the pipe and adequately drain the pond area down.

G. Recreation and Parks/Brian J. Woodward/January 17, 1996

- 1,2. There is no requirement for passive recreation area, only active which we have shown on the final development plan and plat, however some of the area has been labeled as passive use which has been placed on the plans.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 10

3. Recreation & Parks has previously agreed to these areas, and to the pathways, tot lot, and water activities pier. These improvements are over and above the minimum requirements.
4. The trails have been connected to the sidewalk system in certain areas.
5. We have provided some equipment with details on our plan as requested and a copy for your review.
6. The equipment will be handed under the landscaping/screening agreement prior to building permit being obtained.
7. No off-site sidewalk extensive is required per an agreement with Joe Elbrich.

H. PACE/Landscaping/Mark Fiorello/December 20, 1995

1. We have omitted the trees from the island, but have retained shrubs which should not create any problems.
2. Yes.
3. The proposed plantings are not intended to meet reforestation/mitigation issues. When final approval is obtained we will provided a detailed cost estimate with plantings to you for processing.

I. Critical Area Commission/Regina Esslinger/January 17, 1996

1. We have revised the buffer as required, however we can not remove the lots from the buffers and meet the County Area requirements. These areas will be protected with the Forest Conservation Easements as shown.
2. We have provided a more detailed chart for the proposed impervious areas shown which should clarify the issue. A notation that the allowable 15% impervious areas has been provided. We are not requesting any variance at this time.

Ms. Lori Allen

Woods Landing, Section Two, Sub #73-519, Proj #95-221

February 26, 1996

Page 11

3. Department of Natural Resources has issued a letter which allows open construction of our site after September, 1996. We will not disturb the area from May-August of this year only. A copy is enclosed for your review.
4. Our proposed pathway system will not require the clearing of trees or shrubs and will be mulched not paved.
5. We have clarified this area and have provided the required buffer as shown on the revised plans.

J. PACE/Archeological/Al Luckenback/December 27, 1995

1. You have been advised to perform a Phase I study on the area to be disturbed by a storm drain outfall behind Lots 16-24.

Sincerely,

Mark S. White

Mark S. White

MSW:sk

Attachments

cc: Jeff Gish

Ed St. John

William Utz

FILE:WOODSLAN.PRESLETT.DOC.



ANNE
ARUNDEL
COUNTY,
MARYLAND

CURRENT PLANNING
2664 RIVA ROAD, P.O. Box 6675, MS 6301
ANNAPOLIS, MARYLAND 21401

DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

January 16, 1996

Anarex, Inc.
303 Najoles Road, Suite 114
Millersville, MD 21108-2506

Attention: Mark S. White

Dear Mr. White:

Re: Woods Landing Section II
Sub. #73-519, Proj. #95-221
(Revised)

The submitted final plan for Woods Landing Section II has been received and reviewed. The following comments shall be addressed prior to plat approval.

The following comments are based on the engineer's reply of November 20, 1995 to the May 6, 1994 comments from Steve Callahan:

- IIB. Setbacks #1, 2 and 5 are not being met on all lots. Please clarify and revise. These setbacks are also not the same as listed on the plat.
- IIC. Required open space is not shown.
- IIH. Please see Penny Chalkley's comments dated December 21, 1995. The subdivision regulations require, insofar as possible, that significant natural features be preserved. (Article 26, 3-109) Under this section of the code, the request made by the environmental reviewer is not unreasonable. If it is possible to provide a specimen tree a better opportunity to survive, it should be done.
- IIJ. Has not been adequately addressed. The request is for a row a townhomes, not one.



- IIP. Sidewalks will be required throughout the development on both sides of roadways and drives (as per an internal PACE meeting). This will affect impervious computations. Please revise.

Also continue the sidewalk within the right-of-way, along Woods Landing Drive, to intersect with the sidewalk on Bay Head Road. As well as completing the sidewalk on Secretarial Drive, this will complete the sidewalk system. Note that any increase in impervious surface (within Section II only) must be calculated as part of the 15% maximum. Any impervious area proposed in existing right-of-ways does not count against impervious criteria. Please also note on the plat and plans that the proposed path system may not disturb any forest area (trees or shrubs) or it will count against the clearing calculations and may not be allowed.

The following comments are based on the engineers reply of November 20, 1995 to the March 21, 1995 comment letter from Steve Cover:

- G. See IIP above.
- I. A Phase I Archeological Study will be required. See Al Luckenbach's comments dated December 23, 1995.

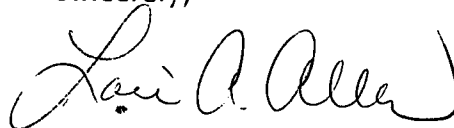
General Comments:

1. All parties of interest shall sign the plat including financial institutions (all sheets).
2. The Health Department shall sign the plat.
3. Correct the errors/omission as shown on the "red-lined" plat attached. (This plat shall be returned to this department.)
4. Plat one of four, General Notes #7 is unacceptable. The lots shall be established at time of Plat. Remove note and provide accurate lot sizes on all plans and the plat.
5. List all waivers on the plat.
6. Submit verification of taxes paid, year 96/97.

7. Complete the BGE and C&P note on the plat and provide copies of the recorded agreements.
8. Was the boundary survey done to mean high water? If so, please note it on the plat.
9. Note the source of topography on the plan.
10. A certificate of title will be required prior to plat approval.
11. It does not appear that the grid tics were defined by the North American Datum of 1983. Please revise on the plat and plans.
12. A minimum 5' is needed between lots to provide drainage area and access. This has been previously requested by Greg Stewart. The townhome lots should not be abutting each other. Please revise.
13. Why is clearing being shown only on part of the path to the tot lot? It is a proposed path. It appears that clearing for the path cannot be avoided. Please revise on plan and all computations accordingly.
14. Sewer and water allocation shall be approved prior to final plat approval. List the allocation note on the plat.
15. Provide project numbers on all plans and plats.
16. HOA documents shall be submitted and approved by the Law Office prior to plat approval.
17. Provide a copy of the recorded pier access agreement. How does this agreement affect Section II? Are easements required?

If you have any questions, please call me at (410) 222-7458.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori A. Allen". The signature is fluid and cursive, with the first name "Lori" being more prominent.

Lori A. Allen
Development Division

LAA/jls

Attachment

ANNE ARUNDEL COUNTY
Annapolis, Maryland
Department of Planning and Code Enforcement
Engineering
INTER-OFFICE CORRESPONDENCE
January 11, 1996

TO: Lori Allen
Planning Section

FROM: Gregory J. Stewart P.E.

SUBJECT: Woods Landing Section 2 3rd Revision
Subdivision No. 1973-519
Project No. 1995-221
Final Progress Meeting 1/11/96, 11:00am

MESSAGE:

The above referenced project has been reviewed and the following comments and recommendations should be resolved prior to final approval:

- A. The following items from May 9, 1994 and September 14, 1995 need to be resolved:
1. The hollow core cul de sac was to include a 26' wide lane. Based on the attached ASSHTO template for bus turning movements we will accept 24' as the paving width.
 3. Sidewalks shall be provided along the south side of existing Woods Landing Road from the cul-de-sac to Bay Head Road. Based on a field observation no impacts to trees were apparent, as this area was grass. It was noted that field adjustments may be needed to avoid a few isolated trees. Handicap ramps are needed at the intersections. It is also requested that sidewalks be extended along Secretariat Drive to the tie into the existing sidewalks for pedestrian connections.
 6. A rear collection system for SWM is requested for some of the units draining to steep slopes. They should be located outside the lots, thereby, requiring adjustments in the building layouts avoiding impacts to the buffers. Normally the pipes are located with open space (common area) for HOA maintenance. Otherwise, an unobstructed storm drain easement is needed. Also, the rears of the other units need to be captured to alleviate future problems for certain building groups. There are particular concerns near buildings 9-11.
 7. Water quality must be addressed for all impervious areas. Some of the units are not being captured.
 8. Outfalls must be extended down the steep slopes. A detailed stability analysis was not included for the pipes that were not extended to the toe of slope.

B. Final design issues.

1. Internal sidewalks were to be provided along Pintail Lane, as discussed with Steve Callahan. Although the mulched walkway provides some pedestrian links, connections to all parking areas is requested for a complete trail.
2. The trenches should project at least $\frac{1}{2}$ way into to the sand strata. Provide soil borings 5' below the bottom of the trench. Provide 24 hr water elevations. Provide clean outs at all bends or ends for maintenance.
3. The water quality basin may be impacted by the buffer encroachments. A riser structure is requested, along with a control section for larger flows. An extended detention design should be considered. Its outfall apron is excessive.
4. The outfall sections are needed further downstream, if slopes and cross sectional areas' change. Descriptive statements are needed for each outfall.
5. As mentioned at preformal, the turning movements near unit 41 should accommodate trash trucks.
6. The 12' alley should include curbing.
7. The grading around Building 15 does not indicate it will remain above the flood elevation and its freeboard requirements.
8. It is suggested that an open space strip be retained around all building groups to provide access to the rear of the units. This area could also contain the common storm drain pipe.
9. Pertinent spot elevations are needed to ensure adequate drainage.
10. Various inverts are missing on the profiles. Please ensure all pertinent information has been shown.
11. Address SCD comments.
12. Address Traffic comments.

Once the above issues have been resolved, we'll be in the position to recommend plat approval

gjs.woods2.3f

ANNE ARUNDEL COUNTY
Annapolis, Maryland
Department of Planning and Code Enforcement
Engineering
INTER-OFFICE CORRESPONDENCE
January 16 , 1996

TO: Lori Allen

FROM: Vahid Tayebi VT

SUBJECT: Woods Landing, Section 2
Subdivision No. 1973-519
Project No. 1995-221

MESSAGE:

The final water and sewer plan for the above referenced project has been reviewed. Please note the following comments:

1. The proposed sewer manhole "A", as well as the sewer main from MH "A" to MH "B" must be placed in the paved road.
2. The plan shows the extension of a proposed sewer main and its utility easement along the entire eastern portions of Lot 41. The proposed sewer main and the utility easement associated with it must be moved out of Lot 41 to allow for unimpeded access for maintenance and repair, and also increase the usable area of the noted lot
3. Standard depth sewer manholes (with 6' 9" cover) must be used, where possible (see manholes H, G, and F).
4. The plan shows inadequate horizontal clearance between the proposed sewer manhole "P" and the 15" storm drain in Snow Goose Lane.
5. The proposed water and sewer mains in the western portions of Snow Goose Lane (between Wintergull Lane and Pintail Lane) must be switched, and the horizontal bends shown on the 8" water main must be deleted.
6. Due to the extension of the water mains at the end of Woods Landing Drive, there shall be no trees planted within the island at the center of the cul-de-sac.
7. Any service interruption due to the extension of the proposed water main to the subject project must be kept at a minimum. Further, the Developer must indicate (on the plan) how the shut-off's and interruptions will be handled.

8. The proposed fire hydrants must be entirely within the utility easements.
9. Other comments are noted on the enclosed marked prints.

The above comments must be addressed and resolved prior to final plan approval.

ANNE ARUNDEL COUNTY

Annapolis, Maryland

INTER-OFFICE MEMORANDUM

January 17, 1996

TO: Mark R. Wedemeyer, Planning Administrator, East
The Department of Planning and Code Enforcement

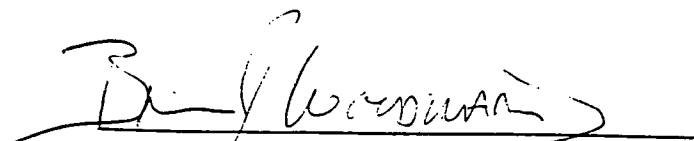
FROM: Brian J. Woodward, Chief, Environmental Programs &
Facilities, The Department of Recreation and Parks

SUBJECT: Woods Landing, Section 2
Subdivision No. S73-519
Project No. P95-221

The Department of Recreation and Parks has reviewed Woods Landing, Section 2 and has the following comments:

1. Area tabulation should show active and passive Recreation Area required as well as active and passive Recreation Area provided.
2. Recreation Area shown should be separated into active/passive and labeled as such with area of each shown on plat.
3. Recreation Area is not in the location of the homes, let alone central to the majority of residents.
4. If a trail amenity is provided, there should be connectors to the sidewalk system.
5. Play equipment and play pit details should be shown on the Landscape Plan and are to include manufacturer and model numbers.
6. The Tot Lot equipment should be bonded under the Landscape Screening Agreement.
7. Sidewalks should extend on both sides of Woods Landing Drive to the intersection at Bay Head Road for easy access to proposed Recreation Area.

The Department of Recreation and Parks cannot recommend approval until the above comments are addressed.


Brian J. Woodward

BJW/pge



Anne Arundel Soil Conservation District

Heritage Office Center

Suite 150, MS #7001, 2662 Riva Road, Annapolis, MD 21401 Telephone (410) 222-7822

January 2, 1996

Mr. Steve Callahan
Subdivision Application Center
Planning and Code Enforcement
Anne Arundel County
Heritage Office Center
2664 Riva Road, MS #6302
Annapolis, MD 21401

Dear Mr. Callahan:

SUBJECT: Woods Landing, Section 2; Subd. #73-519; Proj. #95-221;
FINAL (AASCD #327-17)

The plans for the subject subdivision received November 29, 1995 (for a meeting on January 11, 1996) have been reviewed. The engineer needs to address the following comments:

1. Remove the limits of disturbance and silt fence from the expanded buffer on lots 11 and 32.
2. Grading and sediment control are found within the expanded buffer to install the attenuation device. Check with Environmental as to whether or not a variance will be required.
3. There are areas on the plan where the limits run very close to the expanded buffer line. Ensure at grading permit that the expanded buffer is not disturbed (with the exception of storm drain outfalls).
4. Shouldn't the infiltration trench #2 be taken into more infiltratable soils? The bottom elevation of the trench at 13.5 reveals clay loam soils (infiltration rate .09 inches per hour). If dropped to a bottom elevation of 9.5, one would find loamy sand at an infiltration rate of 2.41 inches per hour.
5. Provide an outfall study from the attenuation device.
6. The 4" PVC with the attenuation trench should be raised and an elbow placed at the inflow so that it does not get clogged.

The District recommends denial of FINAL until the above issues are adequately addressed.

Sincerely,

Lillian M. Griffith
Lillian M. Griffith
District Manager

LMG:Maex:elb

cc: Philip E. Ratcliff, Woods Landing No. 2 Joint Venture
Mark S. White, Anarex, Inc.


ANNE ARUNDEL COUNTY
Annapolis, Maryland

Development Division/PACE

INTER-OFFICE CORRESPONDENCE

January 11, 1996

TO: Lori A. Allen, Planning

FROM: Jane Elberti, Traffic 

SUBJECT: Woods Landing Section 2
Sub. #1973-519, Proj. #1995-221 - Final

MESSAGE:

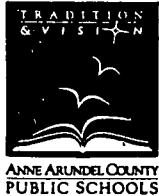
Traffic engineering review for the subject submittal provides the following comments/recommendations:

- 1A. TIS/AFO Road requirements - Based on a 10/30/95 letter from the PACE Director to the Engineer, an updated Traffic Impact Study was not required for this Section 2 final resubmittal.
- 1B. Traffic Engineering file research/review indicates that an updated TIS should be required if additional plat extensions are requested. This is based on the changes in the area road network (closure of US 50 at-grade intersections) which the original study did not address.
- *2. Woods Landing Drive public section -
 - A. Sidewalk should be provided on the south side for a ped connection to Rec. Area #3. There is sufficient right-of-way and disturbance would be minimal. Show the existing sidewalk on Bay Head Road.
 - B. The pavement width on the one-way cul-de-sac should be increased to 26' as previously required.
- *3. Sidewalks should be provided on the internal roads as they were shown on the revised pre-sketch plan.

- *4. Between unit blocks provide additional path connections from the roads to the perimeter mulch ped path.
- *5. Revise the TCP as per the marked-up plan to be returned to the engineer.
- 6. Parking spaces have been revised to adequately address previous traffic comments. Distribution is adequate.
- 7. The 12' wide service drive between Wood Duck/Snow Goose Lanes has an inadequate turn radius around Lot 41.

Traffic engineering approval is withheld until comment 2 - 5 are addressed.

JE/jls



December 13, 1995

TO: PLANNING AND CODE ENFORCEMENT
SUBJECT: WOODS LANDING, SEC. 2
SUBDIVISION # 73-519
PROJECT # 95-221 (91-065)

FROM: L.F. RIPLEY
COMMENTS DUE: 1/4/96
TYPE: FINAL
MEETING DATE: 1/11/96
TIME: 11:00 AM

The proposed development of 114 TOWNHOUSES is located in the WINDSOR FARM Elementary attendance area. It is estimated that it would generate 22 elementary student(s) in grades K through 5. This school has a State Interagency Design Capacity of 514 students with an enrollment of 575 students as of 9/94. These students will BE TRANSPORTED.

THIS FACILITY IS INADEQUATE TO SERVE THE PROPOSED DEVELOPMENT.

The estimated 13 student(s) in grades 6 through 9 would attend MAGOTHY RIVER MIDDLE/SEVERN RIVER JUNIOR. This school has a State Interagency Design Capacity of 1,053/1,080 students with an enrollment of 1,072/945 students as of 9/94. These students will BE TRANSPORTED.

THIS FACILITY IS ADEQUATE TO SERVE THE PROPOSED DEVELOPMENT.

The estimated 13 student(s) in grades 10 through 12 would attend BROADNECK SENIOR. This school has a State Interagency Design Capacity of 1,380 students with an enrollment of 1,053 students as of 9/94. These students will BE TRANSPORTED.

THIS FACILITY IS ADEQUATE TO SERVE THE PROPOSED DEVELOPMENT.

COMMENTS:

Approval is not recommended since Board approval was granted until May 29, 1992 and Windsor Farm Elementary is 61 students over capacity. In addition, the elementary school will exceed capacity by 55 students in SY95; 63 students in SY96; 67 students in SY97; and 63 students in SY98. Please be advised that the public school system does not agree with the PACE letter of October 30, 1995 agreeing to extending our approval until April, 1996 since over four years would have elapsed from the date of the school system approval letter of November, 1991 and Windsor Farm now exceeds the school-rated capacity.

File: ProgramPlanning Compaq6/Subs Sub=73519_P#95221

ANNE ARUNDEL COUNTY POLICE DEPARTMENT
CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

INTER-OFFICE CORRESPONDENCE

TO: Office Of Planning And Zoning
Anne Arundel County

FROM: Office Randall L. Gann #1022
Crime Prevention Section

SUBJECT: Analysis And Adequate Facilities Requirements Of:

Subdivision: Wood's Landing Sec. #2
Number: 73-519
Project: 95-221

DATE: December 11, 1995

MESSAGE:

Dear Sir,

The Police Department has reviewed the above referenced property development information and will consider its' impact in determining our manpower allocations.

Our Crime Prevention Section has reviewed the plans for the above subdivision. The following is a list of our concerns:

1. The need of adequate exterior lighting in the planned townhouse lots. There have been major concerns from existing similar communities about the lack of lighting installed by the developer.

If you have any questions about this please call me at 410-222-8564.

Sincerely,

Off. Randall L. Gann
Officer Randall L. Gann #1022
Crime Prevention Section

ANNE ARUNDEL COUNTY HEALTH DEPARTMENT
DIVISION OF COMMUNITY AND ENVIRONMENTAL HEALTH
INTER-OFFICE CORRESPONDENCE

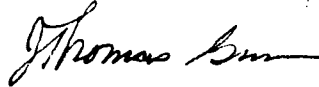
December 4, 1995

TO: Larry Burkins
Planning & Code Enforcement

ANNE ARUNDEL CO.
RECEIVED

DEC 5 1995

FROM: J. Thomas Gruver
Health Department



PLANNING & CODE ENFORCEMENT

RE: Woods Landing Sec 2
Subdivision #73-519
Project #95-221

The Health Department recommends final plan approval for the above referenced project, subject to the availability of public water and sewer.

JTG:ef

ANNE ARUNDEL COUNTY

Annapolis, Maryland

INTER-OFFICE CORRESPONDENCE

Office of the Fire Marshal MS 9202

January 3, 1996

TO: Nancy McGuckian, MS 6302

FROM: Division Commander J. Robert Ray, Office of the Fire Marshal

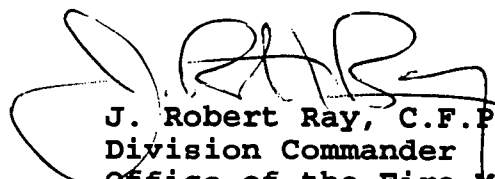
SUBJECT: Sub Division #73-519 Project #95-221
Project Name: Woods Landing, Section 2
Final Review

MESSAGE:

I have reviewed the above referenced plans and they are approved subject to compliance with the following comments.

1. Area shall be served by a water supply system capable of providing 1,500 gpm @ 20 psi residual for two (2) hours in addition to peak hourly demand for fire protection purposes. A swamp analysis indicating fire flow shall be sent to this office. Information is considered valid for six (6) months. This information is good for a period of six (6) months. Our records indicate the latest flow information was received on May 6, 1994.
2. Hydrant space is acceptable. Hydrants must be located within 8 feet of the finished curbing or the end of the paved surface.
3. Fire department access is acceptable.

Respectfully,


J. Robert Ray, C.F.P.S.
Division Commander
Office of the Fire Marshal

pm

cc: Planning and Code Enforcement MS 6303
Engineering Co.

(AA 779-95)

ANNE ARUNDEL COUNTY

Annapolis, Maryland

Department of Planning and Code Enforcement

Development Division

INTER-OFFICE CORRESPONDENCE

December 21, 1995

156-91
779-95

TO: Lori Allen

FROM: Penny Chalkley

PC

RECEIVED
DEC 27 1995

SUBJECT: WOODS LANDING II FINAL
P#1995-221

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

1. Critical Area Report

- Maps, figures, etc. should use the site boundary instead of blobs, stars or circles. Also, any site plans used should reflect whatever submittal is current. (They did note the SAV study as a reprint of a 1994 study, but keep in mind for further submittals.)
- 2. • Regarding the FIDs issue, DNR has asked that this recommendation be considered:

Avoid construction during May - August, the breeding season for most forest nesting birds.

Since their study did indicate the presence of some FIDS, but not the required number of indicator species needed to require a variance to develop as proposed, I feel that the temporal restriction requested is not unreasonable. Their proposed layout has considered the other recommendations and is leaving about 70% of the site forested, maintaining the largest forest block to the northwest, providing wooded buffers on site to off-site wooded areas, as well as woodland around the perimeter of the site.

- 3. • Since their impervious is so close to the maximum, they need to address the issue of whether any sheds, patios, or tennis court, pool or clubhouse in the rec area can be constructed. If not, there must be very clear plat notes to that effect.
- 4. • They can't count areas that are not forested as part of the conservation easement (138, 956, 29, 152 and 12,900 acres). If they are designated for reforestation, they can be under easement but do not count as forested to begin with.

5. • They will have to do bearings and distance for the easement based on Law Office comments 12/13/95.
6. • Be sure there is no Forest Conservation easement on any tidal wetland. They are not forested. (Part of Open Space A). Take the tidal wetlands from the State Wetland Maps. They are the official maps and are codified. The tidal wetlands areas also cannot count for forest on site in determining the total acreage of forest on site. Be sure to use the exact tidal wetland configurations as shown on Maps 55 and 56.
7. • There is no waterfowl concentration on staging area adjacent to the site.
8. • My September comments included the request for a copy of the authorization for the outfall in the buffer. However, this plan relocates the outfall. They should provide a copy of the wetland verification and its reauthorization, since, they don't last indefinitely and the work was done in 1991.
9. Do be careful with redrafting that the buffer/expanded buffer areas with 50' from 15% on greater slopes is exactly 50'. In some areas, it is not.

Somehow, an area impacted by 50' buffer from slopes 15% and greater was missed on prior submittals and it affects what are now shown as Lots 6 and 7 (slopes weren't shaded on some of the earlier submittals and I overlooked them also). Other than that, the buffer/expanded buffer is OK.

10. Calculations:

- Impervious - please clarify.

They list lots as 117,394 but on the plat there is Houses 85,272
Slabs, etc. 7,524

The rest is included in driveways, but I can't make it add up.

They need to be very clear that no rec area facilities or sheds are permitted which result in impervious.

- Woodland

Does the 2.46 acre difference in woodland versus site account for the tidal wetland and cleared areas up by Bayhead Road?

They are proposing to clear less than 30% and have divided it up among rec, lots, utilities, and roads. That means a little more than 20 acres must be included in the conservation easement.

They tied replacement into grading permit.

11. Plat

Needs temporal restriction for FIDs.

Clarify impervious

Show tidal wetlands exactly as they are on the State maps

Show forest conservation easement on forest only unless it is also reforestation and then differentiate.

Why is there a 50' buffer to nontidal wetlands?

Note 8 under General - must maintain buffer/expanded buffer shown on this plat and no overall increase in impervious.

Needs usual nontidal wetlands/buffer no disturbance note since some are not under easement due to storm drainage.

Note Liber/Folio of easement

Would probably help to indicate that buffer/expanded buffer includes

minimum 100' buffer

50' setback from steep slopes

highly erodible soils greater than 5%

4' for each degree of slope

Modify expanded buffer at lots 6 and 7 to account for 50' setback to slopes. Probably need to indicate "expanded buffer" also in Note 10. Work other than shown on FDP may also need a variance and/or grading permit so they should reword note 10.

Cluster note - most of the Open Space will be under easement so indicate "passive" recreation and delete gardening.

While Critical Area laws doesn't specifically mention 30" or greater trees, the long form report requires trees or significantly larger trees to be shown and the general subdivision provision of preserving significant natural features would indicate that these large trees be noted. Those to remain should be indicated so special protection measures for those outside any easement areas can be required at permit.

PC:lc

cc:

 CBCAC

FEB 15 1996



REGINA ESSLINGER
CRITICAL AREA COMMISSION

Parris N. Glendening
Governor

Maryland Department of Natural Resources

Wildlife Division
P.O. Box 68
Wye Mills, Maryland 21679

John R. Griffin
Secretary

Ronald N. Young
Deputy Secretary

February 13, 1996

Jeffrey A. Gish
MIE Properties Inc.
5720 Executive Drive
Baltimore, MD 21228-1789

RE: Woods Landing II

Dear Mr. Gish:

This is in response to your letter concerning the time of year restrictions for construction activities at Woods Landing II in Anne Arundel County. The construction schedule you outlined in your letter of January 26, 1996 is conducive to minimizing impacts to breeding birds during the construction of the subdivision. Once the clearing has occurred after September 1996, there will be no further need for the time of year restriction for this project.

Sincerely,

A handwritten signature in dark ink, appearing to read "Glenn D. Therres".

Glenn D. Therres, Supervisor
Wildlife Diversity Program

P 95-221

RECEIVED

FEB 27 1996

GISH.LTR

cc: J. McCann, MD DNR
R. Serey, Critical Area Commission

ANNE ARUNDEL COUNTY
DEPT. OF PLANNING &
CODE ENFORCEMENT

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FEB 29 1996

Telephone: _____
DNR TTY for the Deaf: (410) 974-3683

CHESAPEAKE BAY
CRITICAL AREA COMMISSION
** TOTAL PAGE.002 **

ANNE ARUNDEL COUNTY
Annapolis, Maryland
Department of Planning and Code Enforcement
Subdivision Application Center
INTER-OFFICE CORRESPONDENCE
September 15, 1995

AA 156-91

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SEP 21 1995

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

TO: Steve Callahan

FROM: Penny Chalkley *PC*

SUBJECT: WOODS LANDING II REVISED FINAL
P 1994-057

1. Be sure to provide current permit for outfall into nontidal wetlands behind building #15.
2. Only a fishing/crabbing pier was discussed. Any recreation in the buffer/expanded buffer must be water-dependent.
3. Evaluation of 1995 breeding bird studies by DNR has resulted in a letter which states the site is no longer considered to be breeding habitat for forest interior dwelling birds. However, there are a number of recommendations listed. A note regarding a temporal restriction should be placed on the plat prohibiting grading, clearing, and exterior construction from May through August.
4. Any clearing of woody vegetation in the 4' wide mulch path, must be included in the allowable clearing. Tot lot also. This was pointed out in the field. Please break down the clearing by
 - ROW/Parking courts
 - Stormwater management, including outfalls
 - Recreation, including pier access, tot lot, active recreation
 - Townhouses (if not the same clearing area for each unit, break out)
5. The remaining woodland must be placed under easement. Note Liber/Folio of the easement on the plat. Note easement areas on plat. Clarify and indicate replacement requirement for clearing that is due prior to issuance of the permit.
6. Have table on plat and plans for maximum allowable impervious (15%) by
 - Recreation
 - ROW/parking/public sidewalks
 - Stormwater management
 - Each lot (unless all lots are the same, then indicate something like 900 sq.ft.

McCARTHY & ASSOCIATES, INC.

AA 779-95

REGULATORY and ENVIRONMENTAL
CONSULTANTS

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NOV 27 1995

Critical Area Report
For Woods Landing Section II
Anne Arundel County, Maryland

ANNE ARUNDEL COUNTY
PLANNING & CODE ENFORCEMENT

95 221

Prepared By:

McCarthy & Associates, Inc.

November, 1991

Revised November 1995

RECEIVED

DEC 4 1995

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

14458 Old Mill Road #201
Upper Marlboro, MD 20772

(301) 627-7505

INTRODUCTION

This report is prepared to satisfy the Anne Arundel County Office of Planning and Zoning Critical Area requirements as promulgated in the Chesapeake Bay Critical Area Legislation and the County Zoning Ordinance. The County is required to make findings that the project proposed is in conformance with County and State critical area requirements prior to project approval. This report will satisfy the Anne Arundel County Narrative requirements for their findings, as described in their memorandum entitled Information Needed for Critical Area Project Submittal.

PROJECT LOCATION

The site is broken into two parcels, and is located on Woods Landing Drive, in Cape St. Claire, Maryland (Figure 1). The site is bordered on the north by the Little Magothy River, the south by Revell Downs, and the east by the completed portion of Woods Landing (Section I).

PROJECT DESCRIPTION

The property is divided, as stated above, into two parcels which comprise approximately 24.13 acres and 7.03 acres, for a total of 31.16 acres +/- . Both parcels (i.e. - the entire site) lie within the Chesapeake Bay Critical Area. The property is currently undeveloped and consists primarily of forest cover, with some open grassy areas located on the smaller parcel. The completed portion of Woods Landing (Section I) consists of at least 13 cluster townhouse buildings on the north side of Woods Landing Drive. The largest of the two undeveloped parcels (Section II) is slated to receive approximately 114 cluster townhouse units, while the smaller of the two parcels will be retained as open space. The areas to be disturbed are forested, but contain no non-tidal or tidal wetlands.

EXISTING LAND USE

Section II of this subdivision is zoned R-5 and O-S, and is currently forested over approximately 95% of the site area. The non-forested space, located on the smaller parcel, is two grassed areas, one of which is a fenced storage area for cars and boat trailers.

NATURAL HERITAGE AREAS

Attached please find the Environmental Review Statement from Ms. Janet McKegg of the Maryland DNR, Fish Heritage & Wildlife Administration (Appendix A). The letter indicates that there are no known endangered or threatened plants or wildlife on the site. Also attached please find a copy of the letter from Mr. Glenn Therres confirming that there is no FIDB habitat on the project site (Appendix B).

From: SARAH TAYLOR (SARAH)
To: Ren, Regina
Date: Tuesday, January 25, 1994 10:53 am
Subject: Woods Landing II

George is faxing over a letter that he recently received from Harry Blumenthal.

Apparently, Blumenthal wants two things: 1) the State to encourage Judge Rushworth to not issue his opinion but to hold it sub curiae; and 2) that the developers will reconfigure the subdivision 100 % according to the new local Critical Area Program in place in Anne Arundel County.

George believes that we should jump on this one. I believe that we should jump also provided that we are the ones (staff) to make the determination that the subdivision has complied fully with the County Program (this of course being coordinated fully with the County); and that there are adequate facilities to support the development of this part of the project.

I have also heard through the grapevine that what probably initiated this was a letter from the County to the developers stating that the grading permit applications that the County received in December were not going to be approved. The developer was provided with two alternatives: 1) to completely reconfigure the subdivision, or 2) apply for variances for each lot which would be considered to not be in compliance with the local Program.

Regina, could you please call the County to see if we can get a copy of that letter? Would you also please check with the County to see if a similar letter might have been sent to Back Bay Beach. Thanks.

What are your thoughts on the above situation? Should we go for it?

Frank Hard 222-7730

*- PWA & utilities agreements > needed prior to bldg. permit
variances > approvals*

Letter to Richard Detas from Chris Soldano - faxed here

JUDGE JOHN C. NORTH, II
CHAIRMAN
301-822-9047 OR 301-974-2418
301-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
301-974-2418/26
301-974-5338 FAX



WESTERN SHORE OFFICE
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

August 29, 1991

Ms. Pamela Mannion Hale
582 Fox Paw Trail
Annapolis, Maryland 21401

Dear Ms. Hale:

Thank you for your letter and your very evident concern for environmental issues around the Chesapeake Bay. The Woods Landing Phase 2 subdivision in your area received an exemption from strict application of the County Critical Area requirements only because it had received development approvals 10 years ago and then was held up on the wastewater treatment allocation list. The 53% forest clearing and 25% impervious surface coverage proposed do not meet current standards for Limited Development Areas of the Critical Area. It is unfortunate that the developer has not followed our suggestion to meet those standards voluntarily which are designed to protect the local resources and quality of life as well as the Chesapeake Bay. However, stormwater requirements and sediment and erosion controls are fully applicable to the project, and reforestation fees will be paid. To the best of our knowledge, the developer is meeting minimum legal requirements.

The current Critical Area stormwater and sediment control requirements limit impacts of development, but do not eliminate them. We must all remain conscious of the effects of our daily activities, as well as new development on our environment and work to minimize them. I am pleased to see that you are aware and concerned. Please let us know if there is more information with which we could provide you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John C. North, II".
John C. North, II
Chairman

JCN/jjd

cc: Governor's Office/Programs
~~AA-156-91~~

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

August 16, 1995

Ms. Penny Chalkley
Office of Planning and Code Enforcement
MS 6303
2664 Riva Road
Annapolis, Maryland 21404

Re: Woods Landing II, P94-057

Dear Ms. Chalkley:

Penny:

Claudia Jones and I have reviewed the two forest interior dwelling bird studies done this season for Woods Landing II. Claudia has talked to Glenn Therres about the newest studies. Although fewer breeding birds were found in this year's studies, there are still forest interior dwelling birds on site (red-eyed vireo, acadian flycatcher). Therefore, we have several recommendations regarding proposed development.

- 1) We recommend that all clearing be minimized to the footprint of the houses. Clearing over roads and parking areas should also be minimized and canopies maintained wherever possible.
- 2) We recommend that protective easements be placed on the uncleared portions of the backyards to eliminate future expansion of cleared areas.
- 3) We recommend existing paths throughout the woods should not be cleared any further.
- 4) We recommend that construction not occur during May through August, the breeding season for FIDBs.
- 5) We recommend that the applicant retain as large a contiguous block of forest as possible, as referenced in Glenn Therres's July 28, 1995 letter, #2.
- 6) We recommend that wildlife corridors that maintain connectivity between the remaining forest and habitats on adjacent properties be retained as much as possible, as referenced in Glenn's letter, #4.

Ms. Chalkley
August 16, 1995
Page Two

Finally, we have one additional comment based on the last site plan sent to our office (May 4, 1994) and the subsequent meeting with county agencies and the applicant (May 12, 1994). We stated at that time that the 15% impervious surface limit must be met. This includes all roads, parking, sidewalks, footprints, etc. This office cannot support a variance to increase the amount of impervious surface in a newly created subdivision.

Kindly submit any new proposals to this office for review. Please call me if you have any questions. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, reading "Regina A. Esslinger", with a long horizontal flourish extending to the right.

Regina A. Esslinger
Chief, Project Evaluation Division

RAE/jjd

Enclosure

cc: Mr. Steve Callahan, PACE
Mr. Glenn Therres
Ms. M. Claudia Jones
AA156-91



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AUG 12 1995

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Parris N. Glendening
Governor

Maryland Department of Natural Resources

Wildlife Division
P.O. Box 68
Wye Mills, Maryland 21679
July 28, 1995

John R. Griffin
Secretary

Ronald N. Young
Deputy Secretary

Milt McCarthy
McCarthy & Associates
14458 Old Mill Road, Suite 201
Upper Marlboro, MD 20772

RE: FIDS Conservation; Woods Landing II (AA Co., tax map 40,
parcel 163)

Dear Mr. McCarthy:

Bird surveys conducted by two independent observers (David W. Holmes, John Canoles) during 1995 indicate that Forest Interior Dwelling Bird (FIDS) habitat, as defined in Critical Area Guidance Paper No. 1, does not occur on the above property. These more recent findings supersede those of Sue A. Ricciardi during 1994.

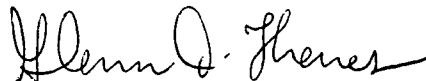
Consequently, no FIDS conservation measures are necessary on the property. However, to help maintain habitat for other forest wildlife, including migratory stopover habitat for FIDS, please consider the following:

- (1) Minimize forest clearing to the footprint of the homes and to that which is absolutely necessary for access roads and parking lots.
- (2) Retain as a large a contiguous block of forest as possible, particularly along the northwest section of the parcel and along the Little Magothy River.
- (3) Avoid construction during May-August, the breeding season for most forest nesting birds.
- (4) Retain or create wildlife corridors that maintain connectivity between the remaining forest and habitats on adjacent properties. For example, maintain forest corridors that connect with forest habitat along the southwest and east boundaries of the property.

Woods Landing II letter
July 28, 1995
page 2

Thank you for considering these recommendations. For additional assistance, please feel free to contact me or James M. McCann.

Sincerely,

A handwritten signature in cursive script, reading "Glenn D. Therres".

Glenn D. Therres, Supervisor
Wildlife Diversity Program

WOODSLDG.LTR

cc: Richard A. DeTar
Ren Serey
Claudia Jones
James M. McCann

Breeding Bird Survey Report

Survey Site: The property known as Woods Landing II, Anne Arundel County, Maryland

Submitted by: Sue A. Ricciardi to McCarthy & Associates, Inc.

June 29, 1994

This survey was conducted in accordance with the guidelines of the Chesapeake Critical Area Commission, and in particular with its publication, Guidance Paper No. 1, "A Guide to the Conservation of Forest Interior Breeding Birds in the Critical Area". As indicated on the enclosed field sheet, the site was visited four times for a total of 12 1/4 hours of observation. In all, 37 species of birds were found and 36 were determined to be possible, probable or confirmed breeders. Four of these species are classified as Forest Interior Breeding Birds. Detailed information on each of them follows.

- (1) **Hairy Woodpecker** - This species was observed on 6/13 and 6/22. On 6/22 an adult was observed and was drumming, which can be part of a mating ritual. It is likely that there is one pair inhabiting the property. This species is at least on territory and is a probable breeder.
- (2) **Acadian Flycatcher** - A single male was observed and heard singing on 6/5 and 6/13. It was also giving the call that is associated with being on its breeding grounds. On 6/13 it was seen chasing a Northern Cardinal, indicating territorial aggression. This species is at least on territory and is a probable breeder.
- (3) **Red-eyed Vireo** - This species was present and singing on 5/26, 6/5 and 6/13. I estimate 2-3 singing males/family units on the site. This species is at least holding territory and is a probable breeder.
- (4) **Scarlet Tanager** - A single male was heard singing on all four visits. This species is at least holding territory and is a probable breeder.

Note: All of the Forest Interior Breeding Species were located on the waterfront parcel. On the field sheet, the first three columns contain the breeding codes for species found on the waterfront parcel. I placed the codes for the species found in the other parcel in the QB (Quarter-block) column.

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MAR 14 1995

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

2
Other possible, probable or confirmed breeding species are as follows:

Possible Breeder

Northern Bobwhite
Chimney Swift
American Crow
Fish Crow
Wood Thrush
Yellow-breasted Chat
Brown-headed Cowbird
Song Sparrow

Probable Breeder

Mourning Dove
Downy Woodpecker
Eastern Kingbird
Great-crested Flycatcher
Eastern Wood-Pewee
Blue Jay
Carolina Chickadee
Tufted Titmouse
Carolina Wren
Northern Mockingbird
Gray Catbird
Brown Thrasher
Common Yellowthroat
House Sparrow
Red-winged Blackbird
House Finch
American Goldfinch

Confirmed Breeder

Northern Flicker
Red-bellied
Woodpecker
American Robin
Cedar Waxwing
European Starling
Common Grackle
Northern Cardinal

Sue A. Ricciardi

6/29/94

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

April 10, 1995

Ms. Penny Chalkley
Office of Planning and Code Enforcement
MS 6303
2664 Riva Road
Annapolis, Maryland 21404

Re: Woods Landing II

Dear Ms. ~~Chalkley~~ ^{Penny}:

Claudia Jones, our science advisor, and I have reviewed the forest interior dwelling bird survey. The Department of Natural Resources Wildlife division is the Critical Area Commission's technical expert and we rely on their division for guidance and recommendations regarding FIDs. In reviewing this subdivision proposal, Mr. Jim McCann, Neotropical Migratory Bird Project Manager, stated in his March 27, 1995 letter to you that "FIDS habitat at Woods Landing II...is extremely sensitive to additional disturbance...As proposed, the development will render the site unsuitable for FIDS." The current proposal does not meet the habitat protection area requirements set forth in the Critical Area Commission's guidance paper on forest interior dwelling birds, in COMAR 27.01.09.04, and in the local Critical Area Program. Therefore, this office recommends the subdivision be redesigned to sufficiently protect this habitat protection area. We request that all revisions be sent to us for review and comment.

Please call me if you have any questions. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Regina A. Esslinger".

Regina A. Esslinger
Natural Resources Planner

cc: Mr. Steve Callahan, PACE
Mr. Jim McCann
Ms. Claudia Jones
Mr. Ren Serey
AA156-91

AA 156-91

Parris N. Glendening
Governor



John R. Griffin
Secretary

Ronald N. Young
Deputy Secretary

MARYLAND DEPARTMENT OF NATURAL RESOURCES
Wildlife Division
Post Office Box 68
Wye Mills, Maryland 21679
410-827-8612

March 27, 1995

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APR 17 1995

Penny Chalkley
PACE
2664 Riva Rd.
Annapolis, MD 21401

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

RE: Conservation of Forest Interior Dwelling Bird (FIDS) habitat at Woods Landing II, Anne Arundel Co. (tax map 40, parcel 163)

Dear Ms. Chalkley,

Surveys conducted by Sue Ricciardi in 1994 confirm that FIDS habitat exists within the Critical Area at Woods Landing II. Conservation of FIDS habitat is mandated in the Critical Area (COMAR 14.15.09.04).

FIDS habitat at Woods Landing II and adjacent parcels is extremely sensitive to any additional disturbance due, in part, to the small size and isolated character of the forest. As proposed, the development will render the site unsuitable for FIDS. Of particular concern is the portion of the proposed development that lies west and north of the existing length of Woods Landing Drive.

Should you have any questions, please feel free to contact me or Glenn Therres. Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "James M. McCann".

James M. McCann
Neotropical Migratory Bird Project Mgr.
Wildlife Diversity Program

cc: Claudia Jones, Critical Area Commission



ANNE
ARUNDEL
COUNTY,
MARYLAND

REGINA E.

AA156-91

CURRENT PLANNING
2664 RIVA ROAD, P.O. Box 6675, MS 6301
ANNAPOLIS, MARYLAND 21401

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MAR 24 1995

DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

CHESAPEAKE BAY
CRITICAL AREA COMMISSION March 21, 1995

Mr. Philip E. Ratcliff
Woods Landing Joint Venture
2613 Cabover Drive
Hanover, MD 21076

Dear Mr. Ratcliff:

Re: Woods Landing, Section 2 (3rd Revision)
Sub. #73-519, Proj. #94-057
Past-Board of Appeals (BA 55-94A) Evaluation

As you may be aware the Board of Appeals (in Case BA 53-94A, decision of 1/6/95) agreed that your project could go forward under the same conditions and "plat extensions" as granted in PACE letters of 12/30/93 and 5/1/94. Additionally, they agreed with your attorney's position that you were "entitled to proceed with this project, with submission of a revised final plat..." for the project. Finally, this approval was conditioned upon the revised final plan complying "strictly with all current critical area requirements".

Therefore, based on the Board's decision; discussions with your engineer (regarding the revised final review process) and the comments and recommendations of the various County and State agencies at the formal presubmittal meeting on May 12, 1994, this Department will accept a formal revised final (R/F) plan for your project subject to the following conditions, as outlined at said meeting, being addressed prior to or with the revised final plan:

- A. The engineer indicated that the prior grading permits (#G02002350 and 2967) were to be placed on "hold" pending revised plan review. It is possible that they could be modified once a new final plan that's in compliance with the Critical Area criteria is approved. (Note status with the revised final submittal.)
- **B. PACE and the engineer agreed to a 20 - 25 foot front BRL (based on garage units) and agreed to evaluate setbacks for "back to back" and "back to side" situations before final submittal.



C. PACE indicated the need for full 26 foot width paved drive aisles (vs 24 feet) and mountable curb, per discussion in March 1994.

**D. Recreation Issues - PACE and Recreation and Parks were concerned about appropriate "quality" recreation area not being provided on site (vs. 1,500 feet away in the other portion of the project). The developer noted that there were existing paths that could be used as a jogging/bike/walking path and that a "fishing/crabbing pier" had been approved off of one point of land for this section. PACE and Recreation and Parks suggested that a more central, smaller "recreation area" be provided to allow the HOA to install a "recreational amenity" (tot lot, tennis court, etc.) near the units. It was agreed that a separate meeting be held (prior to final submittal) to explore and resolve these issues:

1. Central recreation area.
2. Existing pathway around shoreline (sidewalk system).
3. Fishing pier - access and use
4. Recorded waterfront access easement for the benefit of residents of Woods Landing Section 1. (Note: A field meeting may help resolve some of these issues.)

**E. A second major layout issue involved the size and location of the proposed cul-de-sac (Woods Landing Drive) and the four (4) way private drive intersection just beyond the end of the cul-de-sac. PACE advised that the intersections were awkward and too much pavement was involved. The developer indicated that he wanted some type of "demarcation" between the two sections and the beginning of the private road system. A "gated" community entrance was being considered. After additional discussion PACE and the engineer agreed to evaluate several different public road/private road delineation proposals, all with an eye toward reducing excess pavement and enhancing public safety. This issue shall be resolved prior to final submittal.

**F. The issue of a "looped" road system for the area of Buildings 14/15 and 7/8 was discussed and is also to be evaluated by the engineer and the developer. (Perhaps a one-way road system could address access issues for service vehicles.) Resolve prior to final submittal.

**G. Sidewalks - PACE indicated that sidewalks shall be provided on at least one side of all internal roads or a pathway system is to be provided to allow pedestrian access to the cul-de-sac and any amenities. This shall be resolved as part of Item "D" above.

- **H. Ms. Regina Esslinger, representing the Critical Area Commission, indicated that discussions had been held with the developer's consultant (McCarthy and Associates) concerning the forthcoming Critical Area report. Additionally, she indicated that the FIDB (Forest Interior Dwelling Bird) study needed to be undertaken between April/May and August/September and that the results of the study could significantly affect road and unit layout. Therefore, PACE strongly recommended that the developer evaluate, at least, the preliminary FIDB report from the consultant, prior to final plan submittal. (Note - FIDB study was prepared during 1994 and has been submitted to PACE as of March, 1995.)
- **I. PACE advised that a "Phase I Archaeological Survey" would generally be required with the final submittal. However, since the most "significant" archeological areas are near the water's edge and these areas are to be left as "Open Space," PACE agrees to postpone the Phase 1 report subject to the developer agreeing to restrictive covenants prohibiting disturbance of these areas, agreement to permit field investigation by our staff archaeologist and the provision that if disturbance must be undertaken (storm drains, utilities, pathways etc.) that a Phase 1 report for the disturbed area only be provided.

Additionally, with respect to the issue of school capacity and traffic issues PACE reiterates that since the prior plat is still valid and the total number of units has been reduced (153 to 114 today) the prior Board of Education approval remains valid and the prior approved Traffic Impact Study remains valid. These approvals remain in effect as long as the developer continues to actively process revised final plans for Critical Area compliance.

The prior special exceptions (S109-74 and S163-77) also remain in effect as the developer was and is actively pursuing plat and permit approvals.

Finally, given the nature of the changes and since a new/revised special exception is not required, PACE will require that the "Public Notice" section of the Code (Article 26, Section 2-305) be addressed with the revised final submittal and is to include two (2) signs: one at the end of Woods Landing Drive (proposed cul-de-sac) and one on Woods Landing Drive at Bay Head Road.

This Department believes that the above items cover the majority of processing issues that need to be addressed. PACE recommends that the developer and his engineer carefully consider the above

comments/recommendations in the preparation of the final plans. We also will require that a red-line print which addresses Items B & D-I above) be submitted and evaluated by PACE prior to final submittal.

If you or your engineer should have any questions, please feel free to call Mr. Callahan at 410-222-7459.

Sincerely,



Steven R. Cover, AICP
Director

SRC/SC/jls

cc: J. Butschky, Anarex, Inc.
M. Kelly, Chief/SAC
A. Atkinson, Woods Landing Assoc.
J. Murry, Attorney
B. Pollock, Law Office
R. Esslinger, CAC
S. Callahan, AICP, Chief Plan Review



ANNE
ARUNDEL
COUNTY,

MARYLAND

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AA156-91
CURRENT PLANNING
2664 RIVA ROAD, P.O. Box 6675, MS 6301
ANNAPOLIS, MARYLAND 21401

DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

AUG 15 1994

August 5, 1994

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Philip E. Ratcliff
Woods Landing Joint Venture
2613 Cabover Drive
Hanover, MD 21076

Dear Mr. Ratcliff:

Re: Subdivision Name - Woods Landing Section 2
(3rd Revision)

Subdivision #73-519
Project #94-057

This letter should confirm the results of the Formal Presubmittal Review Meeting held on May 12, 1994, (as amended by subsequent events) concerning the above listed subdivision. Attending the meeting were: John Butschky, Anarex, Inc.; Regina Esslinger, Critical Area Commission (CAC); Jeff Gish, MIE Properties; Bill Utz, W. F. Utz Construction; Betsy Kulle and Ann Atkinson, Woods Landing Community Association; Chris Maex, Soil Conservation District; Jack Keene, Recreation and Parks; Steve Callahan, Greg Stewart, Penny Chalkley, Jon Mayer, Bob Tyson, Department of Planning and Code Enforcement.

I. The before-mentioned public agencies/individuals reviewed the plan and provided comments. Additional comments were provided by PACE/Utilities and Historic/Archaeological Sections. Other agency comments were not requested due to the nature of the revisions.

II. Discussion:

This Department hereby advises those in attendance at the meeting on May 12, 1994 that a question has been raised regarding the validity of the prior special exception and other review approvals, given the wording in the Court's opinion in Woods Landing Community Association vs. Woods Landing 2 Joint Venture (Civil Case No. C93-2133.AA). Please find attached our letter to the developer outlining these concerns (dated June 17, 1994).

As such the "minutes" of said meeting are held in abeyance, pending the outcome of the appeal of our decision to the Board of Appeals (Case #BA55-94A).

August 5, 1994

Page 2

III. Conclusion:

Based on the above comments, this Department has placed this file in the "inactive" category, pending the outcome of Board of Appeals Case BA 55-94A.

If you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Callahan', with a long horizontal line extending to the right.

Steve Callahan, AICP
Senior Development Planner

SC/jls

cc: Ms. Ann Atkinson
Ms. Regina Esslinger, CAC
Mr. John Murray
Subdivision File
All Review Agencies
Developer
Engineer

ANNE ARUNDEL COUNTY

Annapolis, Maryland

INTER-OFFICE CORRESPONDENCE

June 9, 1994

TO: Robert J. Dvorak, Director, Permit Application Center

FROM: Jamie Baer Insley, Senior Assistant County Attorney *JSI*
Robert M. Pollock, Senior Assistant County Attorney *R*

RE: Woods Landing No. 2 Joint Venture

This memorandum is sent to confirm the substance of our conversation of June 2, 1994 in which you were advised that, by virtue of the unappealed Circuit Court decision in Woods Landing Community Association, Inc., et al v. Woods Landing No. 2 Joint Venture, Civil Action No. C-93-2133.AA, you are without authority to approve a new final plat for Woods Landing, Section 2 based upon the previous grant of a special exception.

On or about December 31, 1991, the County granted final plat approval for Woods Landing, Section 2. That approval was, in part, based upon a special exception for townhouse development in the R5-Residential zoning district, as is required under the Anne Arundel County Code, Article 28, Section 2-503(9). The special exception was approved prior to the property being placed on the water/wastewater allocation list in 1985.

The 1991 final plat approval was appealed to the County Board of Appeals (which affirmed the plat approval) and further appealed to the Circuit Court for Anne Arundel County. That Court reversed the decision of the Board and further required any subsequent plan¹ to comply strictly with "Maryland's Critical Area Criteria and law." The appeal period having lapsed, the plat is now void.

¹ The Court decision reverses the "plan" for Woods Landing 2. The appeal was of the subdivision plat which, by its very nature, included the planned layout of the development. We read this as a reversal of the plat.

June 9, 1994

Under County Code, Article 28, Section 12-107(a), the approval of a special exception is rescinded by operation of law if the use is not completed and in operation within two years of the decision. Counting from the "release" of the water/wastewater allocation space on the Broadneck Peninsula at the end of 1989, two years have now elapsed and the special exception is also void.

As you are aware, a variance from Code provisions can only be obtained from the Administrative Hearing Officer (County Charter, Section 535) or, on appeal, by the County Board of Appeals. County Charter, Sections 536, 602. Therefore you are without authority to approve a revised plat submittal which de facto extends the life of the special exception.

We hope this information is of assistance to you. Should you require a formal opinion of the Office of Law, please make request to Judson P. Garrett, Jr., County Attorney.

JB1/RMP/ldw



ANNE
ARUNDEL
COUNTY,
MARYLAND

CURRENT PLANNING
2664 RIVA ROAD, P.O. Box 6675, MS 6301
ANNAPOLIS, MARYLAND 21401

DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

June 17, 1994

Mr. Philip Ratcliff, President
Woods Landing Joint Venture
2613 Cabover Drive
Hanover, MD 21076

Dear Mr. Ratcliff:

Re: Woods Landing, Section 2 (3rd Revision)
(Sub. #73-519/Proj. #94-057)

Please be advised that questions have been raised regarding the effect of the Court's decision in Woods Landing Community Association, Inc. vs. Woods Landing 2 Joint Venture (Civil Action No. C-93-2133.AA) on the validity of the prior plat and special exception approvals. The Anne Arundel County Office of Law has reviewed the court's decision. Enclosed is a copy of their memo to me of June 9, 1994.

Generally, the effect of the Law Office's memo, based on the court's decision is that the prior plat ("Woods Landing II", Subdivision #73-519/Project #91-065 approved 12/31/91) is now null and void. The prior special exception for townhouses for the site is also void by operation of law. Additionally, based on these facts, prior decisions made by this Department regarding plat extensions, extensions of timeframes to enter into Public Works and/or Utility Agreements, etc., are also voided.

Therefore, the "plat extensions" granted via letters of December 30, 1993 and May 1, 1994, are hereby rescinded. The decisions reached at the March 4, 1994, "concept" meeting regarding submission of a revised final plat; extension of prior Board of Education and Traffic Impact Study approvals are also rescinded.

Having made the above decisions and given the complexity of the court's ruling, this Department urges you and your attorney to again review the court's decision and meet with our Law Office and this Department to evaluate all of your options.

Mr. Philip Ratcliff, President
June 17, 1994
Page 2

Please contact me if you have any questions or wish to schedule a meeting on the above issues.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a small loop at the end.

Robert J. Dvorak
Director

RJD/SC/jls

Enclosure

cc: J. Insley, Law Office
R. Pollock, Law Office
J. Butschky, Anarex, Inc.
L. Burkins, PACE/Administration
M. Kelly, PACE/SAC
S. Callahan, AICP, PACE/Planning
Subdivision File

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND

RECEIVED
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAVES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974- 2501

MAY 26 1993

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

May 20, 1993

AA 156-91
THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

Via Facsimile

Harry C. Blumenthal, Esq.
Blumenthal, Wayson, Offut, Klos and
Delevan, P.A.
121 Cathedral Street
P.O. Box 868
Annapolis, Maryland 21404-0868

Re: Woods Landing II Appeal

Dear Mr. Blumenthal:

This will confirm our conversation of yesterday in which we discussed the above referenced matter. I asked you, on behalf of the Chesapeake Bay Critical Area Commission, whether or not you would agree to a stay of Grading Permit No.: GO-2002350 for a forty-eight hour period immediately after the permit is issued by Anne Arundel County. I explained that the Commission intends to appeal the permit if and when it is issued and that I was seeking the voluntary stay to assure my client that the subject property's status quo will be preserved until the Commission's appeal from the County's permit decision is resolved. Of course, if your client will not agree to the stay, the Commission may seek an injunction staying the each and every effect of the Board of Appeals' decision to grant subdivision approval for Subdivision No.: 73-519 while the appeal of that decision is pending in the Circuit Court.

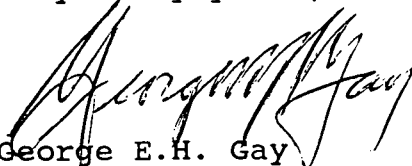
You stated that you could not commit your client to a voluntary stay of the grading permit until you had conferred with it on the subject. You suggested that you did not know how it would respond. You explained that you would attempt to speak with your client today and that you would provide me with its position immediately after you determined what it was.

I look forward to hearing from you as soon as possible concerning this very important matter. In the event I am not in the office when you call, please indicate your client's response to my

Harry C. Blumenthal, Esq.
May 20, 1993
Page 2

secretary.

Very truly yours,



George E.H. Gay
Assistant Attorney General

cc: John C. North, II, Chairman
Sarah J. Taylor, Ph. D., Ex. Dir.
Ren Serey
Liz Zucker
Reginia Esslinger
John Murray, Esq.
Richard DeTar, Esq.

a:WL.HCBlum.ltr
CAC-492

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-2501

May 25, 1993

RECEIVED

MAY 27 1993

**CHESAPEAKE BAY
CRITICAL AREA COMMISSION**

Via Facsimile

Harry C. Blumenthal, Esq.
Blumenthal, Wayson, Offut, Klos
and Delavan, P.A.
P.O. Box 868
Annapolis, Maryland 21404-0868

RE: In the Matter of the Appeal of Woods Landing Community Association, Inc., et al., from a Decision of the Planning and Zoning Officer before the County Board of Appeals of Anne Arundel County in Appeal Case BA 10-92-4, Case No. C-93-2133-AA

Dear Mr. Blumenthal:

This will confirm that you advised my office yesterday that your client will not undertake excavation as per my May 19, 1993 request. Consequently, you agreed, on behalf of Woods Landing II Joint Venture, to a stay of Grading Permit No.: GO-2002350 for a forty eight hour period immediately after the permit is issued by Anne Arundel County.

If this is in any way inconsistent with your client's position as conveyed to my office by you, kindly let me know immediately.

Very truly yours,

George E. H. Gay
George E. H. Gay
Assistant Attorney General

GEHG:cjw

cc: John C. North, II, via Fax/Easton and Annapolis
Sarah J. Taylor, Ph.D., Ex. Dir., via Fax
Ren Serey
Liz Zucker
Regina Esslinger
John Murray, Esq.
Richard DeTar, Esq.

a: BLUMEN.GEG
CAC-4-92

FAX (410) 974-5206



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MAY 23 1963

CRITICAL AREA COMMISSION
CHESAPEAKE BAY
YAB EXAMINING

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MAR 23 1993

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

ANNE ARUNDEL COUNTY BOARD
OF APPEAL - APPEAL No. BA 10-92 A

* IN THE

*

In the Matter of the Appeal of
Woods Landing Community Assoc.,
Inc., et. al., from a Decision
of the Planning and Zoning Officer,

*

CIRCUIT COURT

*

FOR

*

ANNE ARUNDEL COUNTY

*

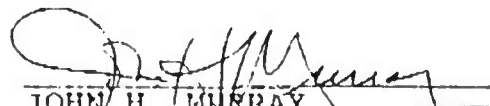
Case No. C-93-02133-AA

* * * * *

ORDER FOR APPEAL

Woods Land Community Association, Inc., Steven and Bonnie
Treat, and Albert and Betsy Kulle ("Appellants"), by their
attorneys, John H. Murray and Richard A. DeTar, respectfully file
this Order for Appeal, and request that the Clerk docket this
Appeal from the decision of the Anne Arundel County Board of
Appeals dated February 19, 1993, ("Decision") sustaining the
decision of the Planning and Zoning Officer, which granted final
site plan and subdivision approval for Woods Landing No. 2, a
copy of which is attached hereto as Exhibit A.

Appellants seek reversal of the Decision and a stay of the
final site plan and subdivision approval to prevent the Applicant
from causing irreparable harm to environmentally protected land,
pending final disposition of this appeal.


JOHN H. MURRAY
Miles & Stockbridge
101 Bay Street
Easton, Maryland 21601
(410) 822-5280

AA 156-91

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MAY 6 1994



William Donald Schaefer
Governor

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Maryland Department of Natural Resources
Tawes State Office Building
Fish, Heritage and Wildlife Administration
580 Taylor Avenue
Annapolis, Maryland 21401

Torrey C. Brown, M.D.
Secretary

May 2, 1994

Mr. Michael Klebasko
McCarthy & Associates
14458 Old Mill Road #201
Upper Marlboro, MD 20772

RE: Woods Landing Section II, Little Magothy River, Anne
Arundel County

Dear Mr. Michael Klebasko:

This is in regards to the above referenced project. There are no known Federal or State threatened or endangered plant or wildlife species present at this project site.

The forested areas on the project site are part of a contiguously forested area approximately equal to or greater than 100 acres in size. The conservation of these forested areas within the Critical Area, which may be utilized as breeding areas by Forest Interior Dwelling Birds, must be addressed by the proposed project development plan. Contact Glenn Therres of the Wildlife Division at (410) 827-8612 for technical assistance.

Sincerely,

Janet S. McKegg

Janet S. McKegg, Director
Natural Heritage Program

JM:cs

cc: Cynthia Sibrel
Glenn Therres
Penny Chalkley
Ren Serey
ER# 94419.AA

ANNE ARUNDEL COUNTY

Annapolis, Maryland

INTER-OFFICE CORRESPONDENCE

May 4, 1994

TO: Stephen V. Callahan, Subdivision Project Manager
Department of Planning and Code Enforcement
FROM: John T. Keene, Chief, Planning and Construction
Department of Recreation and Parks
SUBJECT: Preformal Submittal
Woods Landing, Section 2 3rd revision
Subdivision No. S73-519
Project No. P94-057

The Department of Recreation and Parks has reviewed the preformal submittal for Woods Landing, Section 2 (3rd revision) and has the following comments:

1. In a letter dated July 15, 1991, Mark S. White of Anarex stated that recreation area requirements (for an earlier layout) were more than met. Without computations indicating what recreation area is required as well/as provided, we cannot verify that recreation area requirements have been met.
2. If Recreation Area 3 is the sole recreation area for this section, it does not appear to meet the central location requirement.
3. Recreation Area 3 is not indicated as either active or passive. However, if all on-site trees are to be preserved with a conservation easement, there may not be sufficient active recreation area remaining to meet code requirements.


John T. Keene

JTK:jc

ANNE ARUNDEL COUNTY

Annapolis, Maryland

INTER-OFFICE CORRESPONDENCE

May 5, 1994

TO: Steve Callahan, Planner - Team 1
PACE/SAC

FROM: Jon Mayer
PACE/SAC/TRAFFIC



SUBJECT: Woods Landing

Subdivision #73-519
Project #94-057

MESSAGE:

The Preformal submittal has been reviewed from a traffic engineering standpoint. The following comments/recommendations are provided:

1. Due to the fact that this project was previously approved, an updated Traffic Impact Study will not be required at this time.
2. We recommend that the existing 60/40 Woods Landing Road right of way be extended thru the proposed four way intersection, thus eliminating the cul-de-sac and the amount of impervious area.
3. Foreseeing the likelihood that residents/guests will park on the proposed roadways, we highly recommend requiring 26' roadways throughout, in order to provide maximum maneuverability when entering/exiting driveways.
4. Since the garage of each proposed unit must be considered as a parking space, a note should be added to the Record Plat stating that no garage will be converted to "living space".
5. We recommend requiring the following guest parking space alterations:
 - a. Shift proposed Building #13 approximately 22 feet to the west, providing five (5) centrally located guest spaces where three are now shown, and three (3) guest spaces adjacent to Building #16 where five are now shown.
 - b. Provide four (4) guest spaces south of proposed Building #12.

- c. Relocate the guest spaces adjacent to proposed Building #10 away from the inside radius, either directly across the street, or to the north on the opposite side of the street.
- 6. We recommend that proposed Buildings #4, 5, & 6 are shifted to the north, allowing continuous sidewalk connection, while maintaining adequate driveway length. Likewise, the same goal may be achieved by shifting proposed Buildings #15 & 16 to the south, as well as slightly realigning proposed Building #10.

JFM/
File: 16

ANNE ARUNDEL COUNTY
Annapolis, Maryland
Department of Planning and Code Enforcement
Engineering
INTER-OFFICE CORRESPONDENCE
May 9, 1994

TO: Steve Callahan
Planning Section

FROM:  Gregory J. Stewart P.E.

SUBJECT: Woods Landing Section 2 3rd Revision
Subdivision No.1973-519
Project No.1994-057
Preformal Progress Meeting 5/12/94, 10:00am

MESSAGE:

The above referenced project has been reviewed and the following comments and recommendations are offered for your consideration, with the understanding that the Sketch phase would be skipped:

1. The cul-de-sac should be extended to include the four way intersection. It should be designed as a hollow core type with an outside radius of 47', pavement width of 26' and a grass or landscape island.
2. A loop road should also be incorporated for the eastern units accommodating trash collection and other services.
3. Sidewalks should be provided along south side of the existing Woods Landing Road from the cul-de-sac to Bay Head Road, if they don't exist. They may also need to extend along Bay Head Road.
4. Curb and gutter should be provided throughout the development. The road grades within the development should be minimized avoiding operational problems during inclement weather. The internal roads should be 26' wide throughout.
5. Guest parking should be located away from fillets avoiding potential conflicts.
6. A rear collection system for SWM is requested for some of the units draining to steep slopes. They should be located outside the lots, thereby, requiring adjustments in the building layouts avoiding impacts to the buffers. We'll discuss during the meeting.
7. Water quality must be addressed for all impervious areas. A waiver to peak management could be submitted at Final, based on the direct tidal outfall.
8. Outfalls must be extended down the steep slopes.

gjs.woods2.3p

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ANNE ARUNDEL COUNTY

Annapolis, Maryland

MAY 3 1994

INTER-OFFICE CORRESPONDENCECHESAPEAKE BAY
CRITICAL AREA COMMISSION

April 25, 1994

TO: Steve Callahan, Dept. of Planning & Code Enforcement
FROM: Penny Chalkley, Environmental Planner
SUBJECT: Woods Landing, Section 2 - Revision - Preformal P94-057

They will need an updated Critical Area report with their next submittal that specifically addresses all the criteria and includes an Environmental Review Statement from DNR, computations on clearing and impervious coverage, compliance with Habitat Protection Areas, stormwater management in compliance with Bill 61-93, permits for wetland impacts, and easement on forest to remain/any reforestation.

Is active use proposed for the cleared areas of Recreation Area #3? Passive for the wooded part? Will parking be necessary? It was previously recommended that a walking system through the site following existing trails, proposed easements, etc. be considered. Can this be accommodated without clearing? Note when open space is passive. Where are Rec Area 1 and 2?

Access to the fishing/crabbing pier must be shown with the next submittal.

The root systems of specimen trees are larger than the tree circles would indicate. Relocate the sediment trap to avoid the 27" oak. Show expanded buffer line on future submittals.

On the colored up plan, they shouldn't keep the woodsy color over the sewer line and existing storm drain line. The sidewalks and steps should be brown also.

The plat and FDP must show the conservation easement.

PC/jls

cc: FCSBAG

WOODSLA/ESPPCHAL

WOODS LANDING II
A List of Possible Issues

Existing Natural Resources

The project site is 31.16 acres in total area.

It is located along the shoreline of the upper reaches of the Little Magothy River.

It should be noted that the Little Magothy River system is an shallow (3-5 foot depth as shown on charts), confined embayment that has very little flushing potential because of its very restricted connection with the Chesapeake Bay (Refer to aerial photograph).

The project is proposed on 2 separate "areas" of the property. A total of 153 units are proposed with 12 units located on the small 7.03 acre parcel and 142 units on the big 24.13 acre parcel.

Large Parcel

The large parcel is relatively mature deciduous woods dominated by white oak, chestnut oak, hickory in the canopy. Large trees average 18 -24 " DBH with a number of significantly larger trees also found. Understory is dogwood, sassafras, mountain laurel and blueberry. Some of the laurel is of significant size and may be greater than State listed specimen (See Issue #9).

Tidal wetlands dominated by cattail occur in the upper reaches of the Little Magothy shoreline. The tidal marshes grade into patches of nontidal wetlands near the upland edge.

The shoreline is steeply sloped, but is stabilized by the forested vegetation and protected by the tidal marsh (where the marsh occurs). The sloped shoreline is comprised of potential highly erodible soils (Slopes greater than 15% and K factor greater than .35).

The soils on the majority of the site are Mattapex (not hydric but with an erodibility factor of .37). Hydric soils (Bibb, Othello) occur in the confines of the nontidal wetlands.

Note: Board of Appeals (BOA) "was struck by the beauty of the site" (BOA Opinion p.7)

Small Parcel

The small parcel is bisected by a nontidal wetland that drains into the Little Magothy system. The vegetation is grassy areas and patches of "young" forest.

5/21/93

ISSUE #1 Identification of HPA's

HPA's are defined under local ordinances:

Article 21 Title 2 22B p.5
Article 26 1-101 27B p.22
Article 28 1-101 28B p.40

Tidal wetlands were identified by McCarthy report and are shown on the subdivision plats. No disturbance is proposed in tidal wetlands. Require a minimum 100' Buffer (See Issue #2 below).

There are no tributary streams on the project site.

Nontidal wetlands identified by addendum to McCarthy report (11/21/91) and are shown on 2 of the final subdivision plats. Nontidal wetlands occur on the small parcel but they were not shown on the final subdivision plan. Need to check grading plans. Nontidal wetlands (that are not a tributary stream) require a minimum 25' buffer. On final subdivision plan, buffers are shown for nontidals on big parcel, but not for nontidals on small parcel. Need to check grading plan.

Endangered/threatened species

Memo from P. Chalkley (11/25/91) says there is no documentation of rare species on the site. However, there is no evidence in CAC and County files that DNR environmental review process under Janet McKegg was completed for threatened and endangered species.

Anadromous fish spawning

No mention of this in files as being addressed by County, however the AA. Co. maps show the area to be spawning for white perch and a memo from P. Chalkley dated 12/6/83 says that finfish spawn in the area. See Issue # 11 below.

Colonial nesters, waterfowl concentration areas are not specifically mentioned in CAC or County files (Not written confirmation by DNR), however there is a copy of a phone message in AA Co. files that says Bill Gates has no problem with the project (Message dated 11/21/?).

DNR (Letter from Bill Gates dated 3/18/92) states that they would not consider the project area potential FID habitat because of parcel size and isolated by surrounding development. However, in the hour that CAC staff did their site visit incidental id through calls or sightings included 3 FID species (pileated woodpecker, scarlet tanager, red-eyed vireo) using the area. NOTE: incidental sightings do not mean that breeding occurs, just a cursory indication that maybe DNR conclusion was "hasty", and FIDs should have been checked out.

Large parcel is a riparian forest of greater than 300' in width as defined under the AA Co. program, (but it is not mapped as one on AA Co. maps). See Issue #7 below.

5/21/93

Not a large forested area or connected to one.

Not a Natural Heritage Area according to maps that DNR gave CAC and as indicated to McCarthy by AA. Co. in his report. P. Chalkley notes it is not a Heritage Area in memo (11/25/91).

Not mentioned as a wildlife habitat of local significance, however it is a Uplands Natural Boundary Area as defined in the ordinances and described in the County Habitat Assessment Manual. Chalkley memo dated 11/25/91 and notably Chalkley memo 12/6/83 in which she says "retention of woods is virtually impossible" for the project.

Wildlife Corridors are considered an HPA under the ordinances. The parcel is currently functioning as a valuable wildlife corridor. No mention of this as an HPA in CAC or County files (including McCarthy report). The site will no longer have any wildlife corridor functions if developed as proposed. See Issue #8 below.

Note: Not all HPA's were identified according to the Habitat Assessment methodology as required in the definition of HPA's (See definition citations above). A Critical Area Report and Habitat Assessment (HA) is required under Article 26 2-303 (11) p.28. A HA and a Breeding bird survey is required under Article 26 3-110(G) (3) p.34 and Article 28 1A-104.(A) (6). P. Chalkley notes (11/25/91) that DNR did not require a breeding bird survey. McCarthy report is a Critical Area Report but he did not identify all HPA's that are listed in the Habitat Assessment Manual, so it may or may not be clear if the requirements for a HA have been met. In letters from Murray to Frank 7/31/91 and 2/29/91, Murray states that McCarthy told him he didn't do a full assessment. A HA and HPA, buffers and vegetative communities must be shown on grading plans Article 21 2-206b(11) p.10. Murray requested that the County get a full habitat assessment. Letter from F. Ward to Murray 11/4/91.

ISSUE #2 Minimum 100' Buffer

A minimum 100 feet of Buffer from tidal wetlands is required under:

- Article 21 2-301(I) p.11
- Article 26. 3-110 (A) (1) p. 30
- Article 26. 3-110 (A) (4) p.30
- Article 28. 1A-104(A) (1) p.47

The Buffer proposed for the project averages 50 feet. This is inconsistent with the ordinances and Criteria.

Discussions of not meeting the State Law and Criteria found in:

- Ann letter to Lamartina (4/15/92)
- Ann letter to P. Chalkley (5/1/91 and 12/2/91)
- Ann staff report to CAC (3/4/92 p.2)
- Landtech to J. Murray (4/13/92 p.2)
- J. Murray closing arg. p.7,8,21

5/21/93

A 50 foot Buffer is not adequate for protecting water quality of the Little Magothy River.

Discussions found in:

- Richard Klein report (p 4.)
- Ann letter to P. Chalkley (5/1/91)
- Summary of testimony in BOA Opinion (p. 2).
- J. Murray closing p.12,14
- County closing p.4
- Need to check BOA transcripts

50 feet is not adequate for a conserving wildlife habitat and corridor.

Discussions found in:

- Ann letter to P. Chalkley (5/1/91)
- E. Bradley testimony to BOA
- Need to check BOA transcripts

Misc. notes.

The 50 feet is part of platted lots and will be used by homeowners. Natural vegetation will be removed with out constant and strict enforcement of County regulations. Noise and physical disturbance from human activity will eliminate most wildlife. Minimum 100' should be required. Lots would have to be reconfigured or consolidated but 100 feet is necessary to provide more water quality protection, provide a viable wildlife corridor and protect the shoreline. Shoreline stable now but potentially erodible if natural vegetation is removed and heavy physical disturbance from pedestrian traffic results.

ISSUE #3 Forest Clearing

Requirements in ordinances to allow 20%, possibly 30% clearing:

- Article 21 2-314 (C)(1)(i) and (ii) p.14
- Article 26 3-110 (D)(1)(i) and (ii) p.33
- Article 28 1A-104 (C)(2) and (3) p.48

Requirement to design activities to minimize destruction of forest:

- Article 26 3-110(A)(6)(i) p.31

Requirements that remaining forest to be protected by covenants:

- Article 21 2-314 (C)(1)(iii) p.14
- Article 26 3-110 (D)(1)(iii) p.33
- Article 28 1A-104 (C)(4) p.48

Need to check covenants but don't think there is any forest left to protect because of excessive grading.

Requirements that forests that are identified as HPAs shall be protected:

- Article 26 3-110 (A)(6)(ii) p.31
- Article 28 1A-104 (A)(5) p.47

5/21/93

The proposed project will clear at least 53% (McCarthy report states 16.9 acres) though there are estimates that 80% (R. Klein report p.1) will be cleared. Will get Ken to planimeter to check amount. Excessive clearing is inconsistent with the ordinances. See P. Chalkley chart 4/20/92.

Discussions of not meeting State Law or criteria:

Ann letter to Lamartina (4/15/92)

Ann letter to P. Chalkley (5/1/91 and 12/2/91)

Proposed clearing will destroy habitat value of the area.

Discussions found in:

P. Chalkley memo 12/25/91 She admits impacts to habitat

P. Chalkley memo dated 12/6/83 She knew it back in 83.

Excessive clearing will result in water quality degradation:

Discussions found in:

P. Chalkley memo 12/25/91 She admits impacts to water quality

R. Klein report

Landtech report

Dames and Moore report

Need to check BOA transcripts to see if Co. admits to water quality degradation

Misc. notes.

Excessive clearing will contribute to increased sediment loads, particularly during construction. Forests replaced by impervious areas will result in severe water quality degradation of Little Magothy River system, including possibly shoreline erosion. County did not require reconfiguration or consolidation of lots under insofar as possible to try and meet the required limitations.

ISSUE #4 Reforestation Requirements

Requirement for reforestation. Fee should be \$1.20 per sq.ft for more than 30% grading:

Article 21 2-208 (D) p.10

Article 21 2-314 (C) (2) p.15

Article 21 2-314 (D) p.15

Article 26 3-110 (E) p.33

One of the Broadneck list requires \$.40 per sq.ft. unless mass graded then \$1.20 sq. ft. Need to investigate argument for mass grading.

County is requesting that fee in lieu be collected at time of grading permit application. No distinct record of how and when fees are to be collected in County or CAC files. P. Chalkley memo say to be collected at time of grading permit. Not sure of rate to be charged, but most documents seem to say \$0.40 per sq. ft. as indicated in Broadneck list of "Insofar" requirements. Letter from Anarex to F. Ward 4/18/91 says fee is \$.40 for 738,000 sq.ft.

5/21/93

This does not meet the local ordinances:

Discussions found:

Landtech 4/92 chart (fee is \$.25???)

P. Chalkley chart 4/20/92

This does not meet State law and criteria:

Discussions found:

Ann's letter to P. Chalkley 5/1/91 Recommends equal area replacement for 20%

A 40 cent fee doesn't meet ordinances or insofar as possible except as listed on Broadneck list (unless mass graded).

Misc. Notes

20" and greater trees will be replaced by 1 1/2" seedlings, somewhere in the County. This would not help to protect the Little Magothy water quality or habitat. Need to mark up plans and have Ken planimeter grading areas to make a mass grading argument.

ISSUE #5 Impervious Surface Limitations

Requirements for 15% for site in ordinances:

Article 26 3-110(J) (1) p.36

Article 28 1A-105(A) p.50

Proposed impervious is at least 28% of the site. Will have Ken planimeter to check calculations.

This does not meet State Law and criteria.

Discussions:

Ann letter to Lamartina (4/15/92)

Ann letter to P. Chalkley (5/1/91 and 12/2/91)

Murray to BOA (9/22/92) p.2

Murray closing argument

Misc. Notes

This is almost twice the limitation for subdivisions. A decline in water quality will occur. Reconfiguration and consolidation of lots would reduce impervious insofar as possible.

ISSUE #6 Water Quality and Stormwater Management

Stormwater must be managed to meet 2 and 10 year peak discharge:

Article 21 Title 3 Stormwater

3-203 (a) (1) p.18

5/21/93

Water quality must be improved for the site as required under:
Article 21 3-203 (a) (3) p.18

Stormwater BMP's are inadequate to protect or conserve water quality.

Discussions found in:

Richard Klein report p.2

Dames and Moore report

Landtech report p. 3 (Redesign recommendations and statement of irreparable damage)

Ann's letter to Lamartina 4/15/92 (notes 2 and 20 yr. requirement)

Need to check BOA transcripts for Co. discussion.

Misc. Notes.

Impossible to improve water quality on this site because forest is being converted to concentrated development.

ISSUE #7 Riparian Forest Protection

Requirements with some FIDB association (subject to interpretation):

Article 21 2-314 (B) (3) p.14

Article 26 3-110 (C) (2) (i) p.32

Article 26 3-110 (F) (4) p.34 (Stronger FID Assoc.)

Article 28 1A-104 (C) (1) p.48

The proposed clearing will destroy the function of the riparian forest on the site. County did not identify it as a riparian forest and is not conserving it.

ISSUE #8 Wildlife Corridors

Ordinances list wildlife corridors as an HPA (see definition list in Issue #1).

Requirements for corridor protection:

Article 26 3-110 (C) (1) p.32

Article 26 3-110 (G) (5) p.35

Article 28 1A-104 (C) (10) p.49

Covenants need to be examined.

Misc. Notes

The 50' buffer is totally inadequate as a wildlife corridor. The open space areas are small, fragmented and are biological deadends. They do not connect larger areas of habitat on or offsite.

5/21/93

ISSUE #9 Protection of Trees of Significant Size

Requirements to protect trees with DNR input:

Article 26 3-110(C)(2)(ii) p.32

Article 28 1A-104 (C)(1) p.48

Large trees and possibly State specimen mountain laurel exist on the site. Some large trees are shown on the site plan for protection. Developers say they will adjust house placement during construction to protect trees.

There is no indication in the CAC files or County files that DNR has been involved in protection of significant trees and shrubs. Discussion that specimen mt. laurel will be destroyed, unless there is a 100 foot buffer in R. Klein report.

ISSUE #10 DNR Comments on Clearing

Requirement that developer must consider comments of DNR:

Article 3-110(C)(4) p.33

There is no indication in CAC files or County files that the DNR comments have been requested, received or considered.

ISSUE #11 Anadromous Fish Spawning

County ordinances imply strict need to protect under:

Article 26 3-110 (H)(1) and (2)

AA Co. maps and a memo from P. Chalkley (12/6/83) indicate that the Little Magothy River is a spawning area for finfish (white perch). There is no mention in CAC files or County files that measures will be taken to protect these areas. However discussions on water quality degradation are found in the reports listed above and is considered significant due to clearing and inadequate stormwater measures. We need to discuss the pros and cons of calling DNR fisheries staff on this issue.

ISSUE #12 Setback from Steep Slopes

Requirement that there be a minimum setback of 50 feet from top of steep slopes:

Article 21 2-301 (I) p.11

Article 26 3-110 (A)(1) p. 30

Discussions:

Broadneck general requirement list says only 25 foot setback required. Need to check plans as to how far average setback is.

5/21/93

ISSUE #13 Grandfathering

Requirement that grandfathered projects meet insofar as possible:

Article 21 2-301 (J) p.11

Article 28 1A-105 (G) p.51

Note: didn't find grandfathering in the sub. regs.

Discussions:

AA CO to Woods Landing checklist 12/15/89

Earl Bradley letter Exhibit of BOA hearing makes point about County mapping the area LDA (so not exempt) and that project did not meet provisions of Bill 42-86 and 90-86.

Broadneck list of Sarah states that projects that didn't meet the 2 Bills are insofar as possible and lists requirements, however there is a separate list for Woods Landing that may suggest that stricter requirements may apply for that project (Sarah's affidavit should cover this). Note: J. Murray's Exhibit 8 in closing argument has even a different policy for Broadneck subdivisions (e.g. 100 foot Buffer required and \$1.20 fee in lieu).

Ann's letter to A. Cade 4/29/92 p. 2.

Ann's staff report to CAC 2/4/92 p.2 specifically mentions Woods Landing

Ann's letter to Lamartina 4/15/92

Ann's letter to P. Chalkley (5/1/92)

P. Chalkley memo indicates insofar with stipulations (5/1/91)

Blumental and Baer state that project is exempted in closing arguments, however there is much evidence to the contrary that County was using insofar as possible including a letter from A. Cade to John Astle specifically saying that the project is not exempted.

Murray to C. Frank 7/29/92 p.2

Murray to BOA 9/22/92 grandfathering in program uses "exempted" interchangeable with "grandfathered"

Murray closing argument discusses grandfathering in depth including T. Deming's opinion that only density and area is grandfathered.

P. Chalkley chart 4/20/92 compares full compliance with a "comprise".

Handwritten: 7/23/85 for reply

PHILIP E. RATCLIFFE, C. P. M.

6707 WHITESTONE ROAD
BALTIMORE, MARYLAND 21207
(301) 298-7400

July 10, 1985

Handwritten: 11/11/85

Ms. Florence Beck Kurdle
Planning and Zoning Officer
Anne Arundel County
Office of Planning and Zoning
Arundel Center
Annapolis, MD 21401

RE: Woods Landing

Dear Becky:

You will recall that we have recently completed the subdivision requirements for the final section of Woods Landing. As I know it will be some time before we can anticipate getting a sewer allocation, I want to be sure that nothing is overlooked in terms of keeping our various approvals current during the waiting period. We are particularly referring to the Special Exception permitting townhouses in an R-5 Zone, which was granted through cases S109-74, S163-77 and S236-79. I have further concern about the variance V-310-83, heard in conjunction with rezoning case 349-83 on April 11, 1984, where the approval to have one-way drives was granted.

If there is anything which must be done to keep these entitlements valid, I would appreciate your advising.

Very truly yours,

Handwritten signature: Philip E. Ratcliffe
Philip E. Ratcliffe

PER:tp-c

Handwritten: Activifinal. Proj. 84-142
Handwritten: 16/ lots

Handwritten: 11/11/85

Handwritten: w/L 1104 Du. sheet
Handwritten: 4/24/85

CONSULTANT
REAL ESTATE MANAGEMENT
REAL ESTATE INVESTMENT



ANNE ARUNDEL COUNTY

ANNAPOLIS, MARYLAND 21401

OFFICE OF PLANNING AND ZONING

April 24, 1985

CERTIFIED MAIL

Woods Landing Joint Venture
c/o Maryland Management Co.
6707 Whitestone Road
Baltimore, MD 21207

Re: Allocation of Public Sewer
Capacity, Woods Landing, Sec. 2
Sub. #73-519, Proj. #84-142

Gentlemen:

You are hereby advised that the above-referenced subdivision cannot receive a sewer allocation at this time.

The subdivision of Woods Landing, Section 2 is located within the Broadneck Sewer Service Area which currently has capacity limitations which would preclude approval of this project for a sewer allocation. This project will, therefore, be placed on the waiting list pending available capacity. This project's position will be 45th on the list with 1104 dwelling units ahead of it.

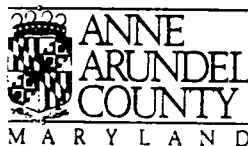
If there are any further questions regarding this matter, do not hesitate to contact this Office.

Very truly yours,

A handwritten signature in cursive script that reads "Florence Beck Kurdle".

Florence Beck Kurdle
Planning and Zoning Officer

FBK/DEF/MCG/jls
cc: Thomas L. Osborne
J. Howard Beard
Linton Pumphrey
Thomas Neel
John Scarborough
McCrone, Inc.
Subdivision File



*Chen
for a Sh... 2
Woods Landing*

HERITAGE OFFICE CENTER
2664 RIVA ROAD
P.O. BOX 2700
ANNAPOLIS, MARYLAND 21404

OFFICE OF PLANNING AND ZONING

November 15, 1991

Hon. John C. Astle
Hon. Michael E. Busch
House of Delegates
Annapolis, Maryland 21410-1991

John and Mike
Dear Delegates ~~Astle and Busch~~:

We were pleased to receive your inquiries concerning Woods Landing Section 2, and wish to advise you of the following as an update to the project status and compliance with the Critical Area requirements.

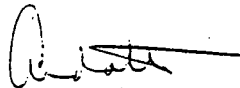
1. The project was initially submitted in 1973 and Section 2 met final subdivision approval requirements and was placed on the sewer allocation waiting list as of April 24, 1985, prior to Critical Areas regulations.
2. The project has not been considered as being exempt from full compliance with the Critical Area requirement but has been subject to the "grandfathering" provisions of complying to the criteria "to the extent possible".
3. Maryland Forest, Park and Wildlife Service Division of DNR reviewed the project and deemed that a bird study was not necessary for the project.
4. The Environmental Division of this office has imposed greater setback requirements along the shoreline than were originally imposed, has eliminated units from steep slopes and has required protection of trees where possible along with the imposition of reforestation requirements.
5. The developer will be performing stormwater management, has agreed to phase construction to increase protection of habitat and has also agreed to prepare a Critical Area report which will be reviewed by the Environmental Division of this office for compliance with the applicable requirements.

Delegates Astle and Busch
November 15, 1991
Page 2

6. The project is in the process of being revised and final approval for the revised final plat has not been granted to date.

A copy of Frank Ward's latest correspondence with the Woods Landing Homeowners Associations also is included for your information. If we can provide any additional information, please contact us.

Sincerely,



Ardath M. Cade
Planning and Zoning Officer

AMC/JJE/bw

Enclosures

cc: Myron V. Wotring
Frank W. Ward

ASTLE/ESPJELBR

Woods Landing Section Two
Subdivision #73-519
Project #91-065

Planning and Zoning
May 9, 1991

The following review comments are based on the Revised Final Plan submittal for the above referenced site. The revised plans have been submitted to update plans which were on the Broadneck Sewer Allocation waiting list and are intended to meet the Chesapeake Bay Critical Area criteria, insofar as possible.

A. Record Plat Comments

1. All owners and parties in interest shall sign the plat including Financial Institutions.
2. Obtain the Health Department signature.
3. Add Liber/Folio to the Public Service Agreements and the Surveyors Certificate.
4. Label all interior roads as private right-of-ways and provide square footage for each road.
5. Add zoning to the area table and list acreage of R5 and OS zoning independently.
6. Provide approximate open space calculations to verify that cluster requirements have been addressed. (Exclusive of O.S. Zoning)
7. Verify that all easements shown on the final plans are also shown on the record plat (S.D. easement Lot 18). Label dedicated open space on the plat as A, B, C, etc... As stated in the engineers submittal letter, as built's will be submitted to finalize lot sizes, open space square footage, etc...
8. Provide computations for required and proposed recreation area.
9. Show front building restriction lines for lots from the private right-of-way's (20' to allow for parking in driveway)
10. Provide parking computations on the plat. **NOTE REGARDING CONVERSION OF THE GARAGES**
11. Add house numbers to the plat.
12. Comments regarding the form and legal sufficiency of the plat are forthcoming from the Office of Law. Homeowners Association Documents shall be submitted with revised plans.

13. Delete Item 2 from the Cluster/Open Space Statement.
14. A waterfront boundary survey shall be part of any future submittals.
15. Add "Coastal Flood Statement" to the plat.

B. Final Development Plan comments

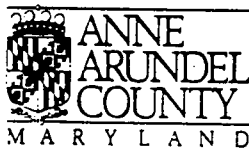
1. The engineer met with Mr. Ward and Penny Chalkley of this Office prior to submittal of Revised Final Plans to obtain preliminary guidance in meeting the insofar as possible clause for Chesapeake Bay Critical Area Requirements. The engineer has provided a minimum 50' buffer to mean high tide and has proposed no disturbance to 25% slopes (exclusive of outfalls). This Office has prepared a red-lined copy of the final plans recommending additional modifications to improve vehicular circulation and reduce clearing/impervious surfaces. These issues shall be reviewed at the meeting and revisions shall be stipulated in the minutes of the meeting. The requested revisions include:
 - a. Re-alignment of Pintail Drive and units 131-135 to provide an undisturbed buffer to Woods Landing Section One.
 - b. Providing a loop road between Wooduck Lane and Black Duck Lane. If the loop cannot be provided, then access to the pier should come from Black Duck Lane and eliminate the service road.
 - c. Relocation of guest parking for proximity to units and to reduce impacts to specimen trees.
 - d. Providing "T" turnarounds at the end of Wintergull Lane, Woodcock Lane.
 - e. Aligning Wooduck Lane with Snow Goose Lane.
 - f. Elimination of end unit garages by incorporating them into the first floor.
 - g. Remove island from Pintail Lane and reduce paving width.
2. The Department of Public Works and Soil Conservation District shall comment on the proposed stormwater management concept.
3. The Traffic Division shall comment on the engineers contention that a recent Traffic Impact Study approved for Pettebone Farms can be utilized for this project. This Office offers no objection since Woods Landing Section 2 was included in that study.

4. Provide typical road sections on the final plans and road plans and address drainage issues for the private roads if open section drive aisles are proposed.
5. A Special Exception must be obtained for the proposed pier prior to plat approval.
6. The Street Tree Plan shall be revised to reflect the correct number of trees as noted by Nancy McGuckian at submittal. Do the proposed trees match the existing species on the north side of Woods Landing Drive?

The proposed Street Trees shall be bonded under the Public Works Agreement.

7. Comments from the Environmental Division of this Office are attached and shall be addressed prior to plat approval.
8. The waterfront building envelopes should be revised to provide a variable width open space buffer to Little Magothy. The buffer shall be designed to allow for the minimum 2,000 square foot lot size while incorporating flat areas to allow for a meandering mulch path along the waterfront. This could be used to offset concerns regarding useable recreation area for Section Two. The lots abutting the waterfront shall not be considered riparian lots.
9. The Department of Utilities shall comment on the issue of Public Water being extended to the site and on the timing of the abandonment of the adjacent private water treatment facility. (See subdivision #74-027 Project #91-033 Revell Downs, Water Treatment Plant and Courts of Cape Saint Claire, Subdivision #90-152 Project #90-090)

CS/jvg



HERITAGE OFFICE CENTER
2664 RIVA ROAD
P.O. BOX 2700
ANNAPOLIS, MARYLAND 21404

OFFICE OF PLANNING AND ZONING

November 1, 1991

Anarex, Inc.
303 Najoles Road, Suite 114
Millersville, MD 21108

Attention: Mark White

Dear Mr. White:

Re: Woods Landing, Section 2
Subdivision #73-519, Project #91-065

Following a review of the revised final plans, these issues shall be resolved prior to plat approval.

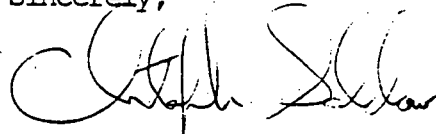
1. Resolve comment #2 from my September 3, 1991 letter.
2. Add the Limit of Disturbance to the Final Plan for development on Whistling Swan Lane.
3. The sewer line extension from Section One near Cranes Roost Court is not within the existing utility easement. Is a new easement being obtained? If so, it must be shown on the record plat or the sewer alignment must be revised.
4. This Office has discussed the cul-de-sac on Pintail Lane with Traffic Engineering and has developed a "T" turnaround which will resolve the buffer issue between Sections One and Two. (See enclosed sketch) A planting plan for supplementing existing vegetation and screening stormwater management devices (outfalls) must be submitted and shall be bonded prior to issuance of building permits for Phase Two. A note to this effect shall be added to Plat One.
5. As stated in the September 3, 1991, letter, the Street Trees shall be bonded under the Public Works Agreement and if sufficient trees are retained, this Office will waive or reduce the Street Tree requirements at that time. Submit a Street Tree plan with the next resubmittal.

November 1, 1991
Page 2

6. Add the following Conservation Easement note to the plat.
"The Conservation Easement shown on this plat is part of the respective lots and open space on which it is located and is intended to protect environmentally sensitive steep slopes along the Little Magothy River. Disturbance is not permitted unless approved by the Anne Arundel County Office of Planning and Zoning. (See covenants and restrictions for specific permitted uses.)"
7. The issues discussed by the Developer and the Woods Landing Section One Homeowners Association, shall be resolved to the satisfaction of this Office prior to plat approval. (See enclosed letter to the Homeowners Association.)
8. A Chesapeake Bay Critical Area Study shall be submitted prior to plat approval. (Exclusive of a Breeding Bird Study)
9. Obtain approvals from the Department of Utilities, Department of Public Works, Board of Education, Fire Department, State Highway Administration, Office of Law and Environmental Division of this Office.
10. Water and sewer allocation shall be processed after all agencies have recommended approval.

If you have any questions contact this Office at 222-7459.

Sincerely,



Christopher Soldano
Subdivision Planner

CS/jls

cc: Subdivision File
Frank Ward
Ardath M. Cade
Review Agencies
C. Frank, Woods Landing Homeowners Association



Anne Arundel Soil Conservation District

Heritage Office Center

Suite 150, MS #7001, 2662 Riva Road, Annapolis, MD 21401 Telephone 222-7822

May 8, 1991

Mr. Frank W. Ward
Development Administrator
Office of Planning and Zoning
Anne Arundel County
Heritage Office Center
2664 Riva Road
MS #6302
Annapolis, MD 21401

Dear Mr. Ward:

**SUBJECT: Woods Landing, Section 2, Revised; FINAL; Subd. #73-519;
Proj. #91-065 (AASCD #272-11)**

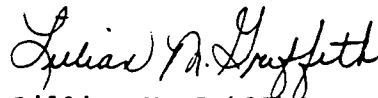
The plans received April 3, 1991 (for a meeting on May 9, 1991) have been reviewed and the District offers the following comments:

1. Provide outfall studies below the proposed riprap of all storm drain outfalls. Riprap may need to be extended if velocity findings prove erosive. The area below the riprap outfalls of I-6, S-2 and S-3 appear rather steep.
2. The 50 foot buffer from nontidal wetlands is being disturbed. Please tighten up the limits of disturbance and remove grading and sediment control at the following areas: vicinity of I-5 below I-6, vicinity of S-2, and in the vicinity of I-12 and S-4. We understand the need to install the storm drains but some of the other grading may be eliminated.
3. It appears that the entire sediment control concept is silt fence. You may need to increase sediment control to include traps such as storm inlet sediment traps. We will investigate sediment controls at grading permit.
4. Also, a Sensitive Area Report will be required at grading permit.

Frank Ward
Woods Landing, Sec. 2, Revised
AASCD #272-11
May 8, 1991
Page Two

The District recommends denial of FINAL until Items 1 and 2 are adequately addressed.

Sincerely,


Lillian M. Griffith
District Manager


LMG:Maex:elb

cc: Anarex, Inc.
Woods Landing Joint Venture
DPW, DSD, DERB
Environmental Section, Planning and Zoning

ANNE ARUNDEL COUNTY

Annapolis, Maryland

ADMINISTRATIVE RECORDS

1983 DEC -7 AM 8:25

INTER-OFFICE CORRESPONDENCE

December 6, 1983

TO: Dwight Flowers

FROM: Penny Chalkley

SUBJECT: WOODS LANDING II SKETCH 83-160
WAIVER 1523

The contours on the map are, in general, impossible to read, thereby making any evaluation incomplete. Steep slopes are impacted by a number of buildings. Due to the proximity of these buildings to the Little Magothy and, in some areas, tidal marshes, they should be pulled back.

The Little Magothy is a spawning area for finfish. Map 56 indicates the presence of brackish low marshes. According to Panel 35C, the property is affected by Zone A9 with an elevation of 8 feet. This should not impact any home sites. However, any variation from the FEMA maps will require a boundary line revision.

The property includes Upland Natural Area #1008 - Little Magothy River, a hardwood forest bordering tidal marshes. It also provides wintering habitat for a variety of birds. Retention of forest appears to be virtually impossible with the number of units, parking and roads proposed. A reduction in the number of parking spaces would be preferable. Steep slopes should be avoided and clearing on slopes adjacent to the water should be prohibited, including underbrush, which helps anchor soil, and inclusion of buffer area to the slopes. As noted before, this will necessitate some rearrangement of units.

The Mattapex soils exhibit seasonal wetness and may exhibit a perched water table.

The Maryland Historical Trust reviewed this site and commented that there are no known sites, and there should be no impacts from development.

No recreation area is noted. A boat ramp is indicated. This needs to be part of a designated community recreation area with a minimum of 30,000 square feet, which comes in under a Special Exception, meeting the criteria. Boats being launched from the ramp will need adequate parking and/or storage.

There are no objections to the waivers requested.

PC/mw

SUBDIVISION

WOODS LANDING

SEC 2 ZONING

R5

STATUS

SKETCH

NUMBER

83-160

SOILS B1BB
TIDAL MARSH
MATTAPEX
Sheet 20

Waste Disposal

PUBLIC WASTE DISPOSAL

Roads; Foundations

MATTAPEX - perched water table; seasonal wetnes

Grading

Erosion may be a problem in sloped areas

WETLANDS

55

MAP

56

TIDAL MARSH 2 AREAS
Brackish low marsh

FLOODPLAIN

PANEL 35C ZONE A9 e1 B

NEAREST WATERBODY

Little Magothy River
Fin fish spawning area

SLOPE

steep slopes

UPLAND NATURAL AREA

UPLAND NATURAL AREA LITTLE MAGOTHY RIV

CRITICAL AREA

NA

AQUIFER RECHARGE
OTHER

NA

NOISE

NA

REZONING

NA

AG PRESERVATION

NO DISTRICTS IN VICINITY

HISTORIC PRESERVATION

NO STRUCTURES SURVEYED

ARCHEOLOGICAL

TO BE REFERRED (SITE 88) - no effect

AESTHETICS

MATURE HARDWOOD FOREST, MARSH, RIVER

AREA(S) OF CONCERN

UPLAND NATURAL AREA, MARSH,
BIRD HABITAT

IMPOSSIBLE

TO READ CONTOURS

BLUMENTHAL, WAYSON, OFFUTT, KLOS & DELAVAN, P.A.

HARRY C. BLUMENTHAL*
EDWARD O. WAYSON, JR.*
M. WILLSON OFFUTT IV*
STANLEY J. KLOS, JR.*
CHARLES F. DELAVAN
PAUL A. HACKNER*
NEIL S. KURLANDER*
LINDA GREER SPOONER*
WALTER S. B. CHILDS
CHRISTOPHER F. DRUMMOND
JEROLD A. MOSES
WILLIAM J. SELLE*
RUTH G. WATSON*

ATTORNEYS AT LAW
121 CATHEDRAL STREET
P.O. BOX 868
ANNAPOLIS, MARYLAND 21404-0868

ANNAPOLIS (410) 268-7707
BALTIMORE (410) 269-5550
WASHINGTON (301) 261-2613
TELECOPIER (410) 268-4269

EASTERN SHORE
119 LAWYERS ROW
CENTREVILLE, MARYLAND 21617

LOCAL (410) 758-0030
TELECOPIER (410) 758-0032

COUNSEL
ROYAL G. SHANNONHOUSE III

*ADMITTED IN MD & DC

September 16, 1992

County Board of Appeals
Arundel Center
Annapolis, MD 21401

Re: Woods Landing Section II Subdivision
Case No. BA 10-92A
Our File No. 50419.40997

Dear Board Members:

In brief reply to the Memorandum filed by Woods Landing Community Association, Inc., I should like to indicate the following:

1. There is no conflict between the Anne Arundel County Critical Area Program and the Chesapeake Bay Critical Area Protection Program and regulations adopted pursuant thereto.

2. COMAR 14.15.02.07 provides for "Grandfathering". However, Woods Landing Section II Subdivision was not "grandfathered", but was "exempted". Consequently, limitations on grandfather provisions are not applicable to subdivisions which are exempted. Nothing within the State critical area regulations or COMAR precludes exemptions, if approved by County and State authorities. In fact, certain exemptions are specifically set forth, as in COMAR 14.15.09.C(8): "As part of the local Critical Area Program to be submitted to the Commission, local jurisdictions may request an exemption of certain portions of the Critical Area from the Buffer requirements . . .".

3. Md. Code Ann., Natural Resources, § 8-1809(d)(2) provides that the Commission shall approve proposed local programs or notify the local jurisdiction of specific changes that must be made in order for the proposal to be approved. § 8-1809(j)(2) provides that the Commission only shall approve programs that meet the criteria adopted by the Commission under § 8-108. § 8-1809(l) provides that if in fact the Commission determines that an adopted

BLUMENTHAL, WAYSON, OFFUTT, KLOS & DELAVAN, P.A.

County Board of Appeals

September 16, 1992

Page Two

program contains a clear mistake or conflict with the criteria or law, the Commission may request the local jurisdiction to correct the deficiency.

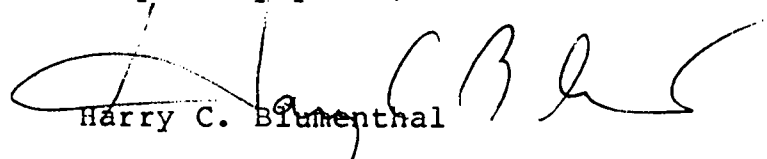
4. The Anne Arundel County Critical Area Program was approved by the Commission and subsequently enacted into law by the Anne Arundel County Council. It is within the province of the Commission to compel corrections of mistakes or clear conflicts. The Commission has not compelled any changes regarding the exemptions for Anne Arundel County subdivisions placed on the sewer moratorium waiting list. The Commission has not disapproved other subdivisions similarly placed on the sewer waiting list, which subsequently were approved pursuant to the exemption provisions.

5. Woods Landing Section II Subdivision has been treated in the same, consistent manner as all other subdivisions placed on the sewer waiting list, and exempted by the Anne Arundel County Critical Area Program.

Protestants would have this Board mistake apples for oranges. The Maryland Annotated Code and applicable COMAR provisions allow "grandfathering", and Protestants argue that "grandfathering" provisions are limited. However, it is not a "grandfathering" provision which is applicable in the instant case, but rather an "exemption", which has been adopted by both the State Critical Area Commission and the Anne Arundel County Council. If a development is merely "grandfathered", then certain restrictions and provisions regarding compliance "in so far as possible" are applicable. However, if a project is "exempt", no provisions of the legislation are applicable to the development.

Protestants' argument is predicated upon a false hypothesis, namely, that Woods Landing Section II Subdivision is grandfathered. Such is not the case. Woods Landing Section II Subdivision is exempt.

Very truly yours,


Harry C. Blumenthal

HCB:mf

cc: Jamie Baer, Esq.
John H. Murray, Esq. ✓

bcc: Betsy Kulle

LAW OFFICES

MILES & STOCKBRIDGE

10 LIGHT STREET
BALTIMORE, MARYLAND 21202

101 BAY STREET
EASTON, MARYLAND 21601

30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

300 ACADEMY STREET
CAMBRIDGE, MARYLAND 21613

TELEPHONE 410-822-5280

22 WEST JEFFERSON STREET
ROCKVILLE, MARYLAND 20850

11350 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030

FAX 410-822-5450

600 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

JOHN H. MURRAY

1450 G STREET, N.W.
WASHINGTON, D.C. 20005

April 23, 1993

Mr. Robert Dvorak
Director of Inspections and Permits
Anne Arundel County Planning & Zoning
P.O. Box 6675
Annapolis, Maryland 21401

Re: Grading Permit No. G0-2002350
Woods Landing II

Dear Mr. Dvorak:

I represent Woods Landing Community Association, Inc. and various residents of Woods Landing I ("Appellants"), who have appealed to the Circuit Court the decision of the Anne Arundel County Board of Appeals in Appeal No. BA 10-92, dated February 19, 1993 ("the Decision") sustaining the ruling of the Planning and Zoning Officer, which granted final site plan and subdivision approval for Woods Landing II.

The Chesapeake Bay Critical Area Commission ("the Commission") has filed a Motion to Intervene in the Circuit Court Appeal on the side of the Appellants and has filed an Answer with the Circuit Court taking the position that the Decision and legal conclusions of the Board of Appeals are contrary to Maryland law. Further, it is my understanding that Anne Arundel County has been notified by the Commission that portions of its local Critical Area Program that are involved in the Appeal must be revised to meet state criteria. The deficiencies the Commission has identified in the existing local Program include the grounds the Appellants have raised in their Appeal.

While the Appeal is pending, the Applicant is seeking to have a grading permit issued so that construction of Woods Landing II can proceed. It would be regrettable and embarrassing if a grading permit is issued to the Applicant who then proceeds to destroy irreplaceable trees and cause other environmental degradation while the Appeal is pending. The new action by the Commission confirms that the Board of Appeals Decision very likely will be reversed. The Planning and Zoning Office and/or the Department of Inspections and Permitting should reserve ruling on the Applicant's grading

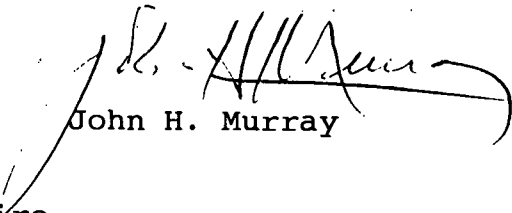
MILES & STOCKBRIDGE

Mr. Robert Dvorak
Director of Inspections and Permits
April 23, 1993
Page 2

permit until the Appeal is decided. At the very least, I request that your office notify me as soon as any grading permit is available to be issued to the Applicant so that appropriate steps can be taken to stop the Applicant from commencing clearing at the site while the Appeal is pending.

Please call me if you have any questions. Thank you, in advance, for your consideration.

Sincerely yours,



John H. Murray

JHM:raw

cc: Jamie B. Insley, Esquire
Thomas C. Andrews, Land Use and Environmental Officer
Harry C. Blumenthal, Esquire
George E. H. Gay, Esquire

WOODS LANDING - SECTION 2

FOREST INTERIOR BREEDING BIRD SURVEY

prepared for:

**MIE Investment Company
5720 Executive Drive
Baltimore, Maryland 21228-1789**

prepared by:

**Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, Maryland 21057
(410) 592-6752**

July 11, 1995

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I. INTRODUCTION

Eco-Science Professionals, Inc. was contracted by the MIE Investment Company to perform a forest interior breeding bird survey for the Woods Landing - Section Two property. This site is a $31.1 \pm$ acre parcel located at the end of Woods Landing Drive in the Cape St. Clair section of Anne Arundel County, Maryland. The survey was performed at the request of the Maryland Department of Natural Resources as part of the requirements for development projects within the Chesapeake Bay Critical Area. The site lies adjacent to tidal waters of the Little Magothy River and is entirely within the Critical Area.

II. SITE DESCRIPTION

The Woods Landing - Section 2 property occurs at the end of the existing Woods Landing Drive. The property is adjacent to the existing Woods Landing - Section 1 community. The site lies adjacent to tidal waters of the Little Magothy River and is entirely within the Critical Area. Land use in the area is low to medium density residential.

The project site is completely forested with mixed oaks and tulip poplar (*Liriodendron tulipifera*) being dominant. Oaks common in the stand include black oak (*Quercus velutina*), chestnut oak (*Q. prinus*) red oak (*Q. rubra*) and white oak (*Q. alba*). The canopy trees average 14-22 inches in diameter at breast height (DBH) and range from 50-80 feet tall. A subcanopy, comprised of mockernut hickory (*Carya tomentosa*) and black gum (*Nyssa sylvatica*) is present. The forest has a fairly open character with limited understory and shrub development. Scattered flowering dogwood (*Cornus florida*), black gum, American Holly (*Ilex opaca*), mountain laurel (*Kalmia latifolia*) and American strawberry bush (*Euonymus americanus*) are common in these strata. Mountain laurel does form a somewhat dense shrub layer along the banks of the Little Magothy on the northern portion of the site. Lowbush blueberry (*Vaccinium angustifolium*) is common throughout the forest, growing only to two feet in height.

Adjacent land uses include the Woods Landing - Section 1 community, other residential development, tidal marsh and open water. Human disturbance on the property appears to be fairly intense along existing trails. These trails are present throughout the site and appear to be used by adjacent landowners as walking paths and for access to fishing areas. Several spots along the bank appear to be regularly used for fishing.

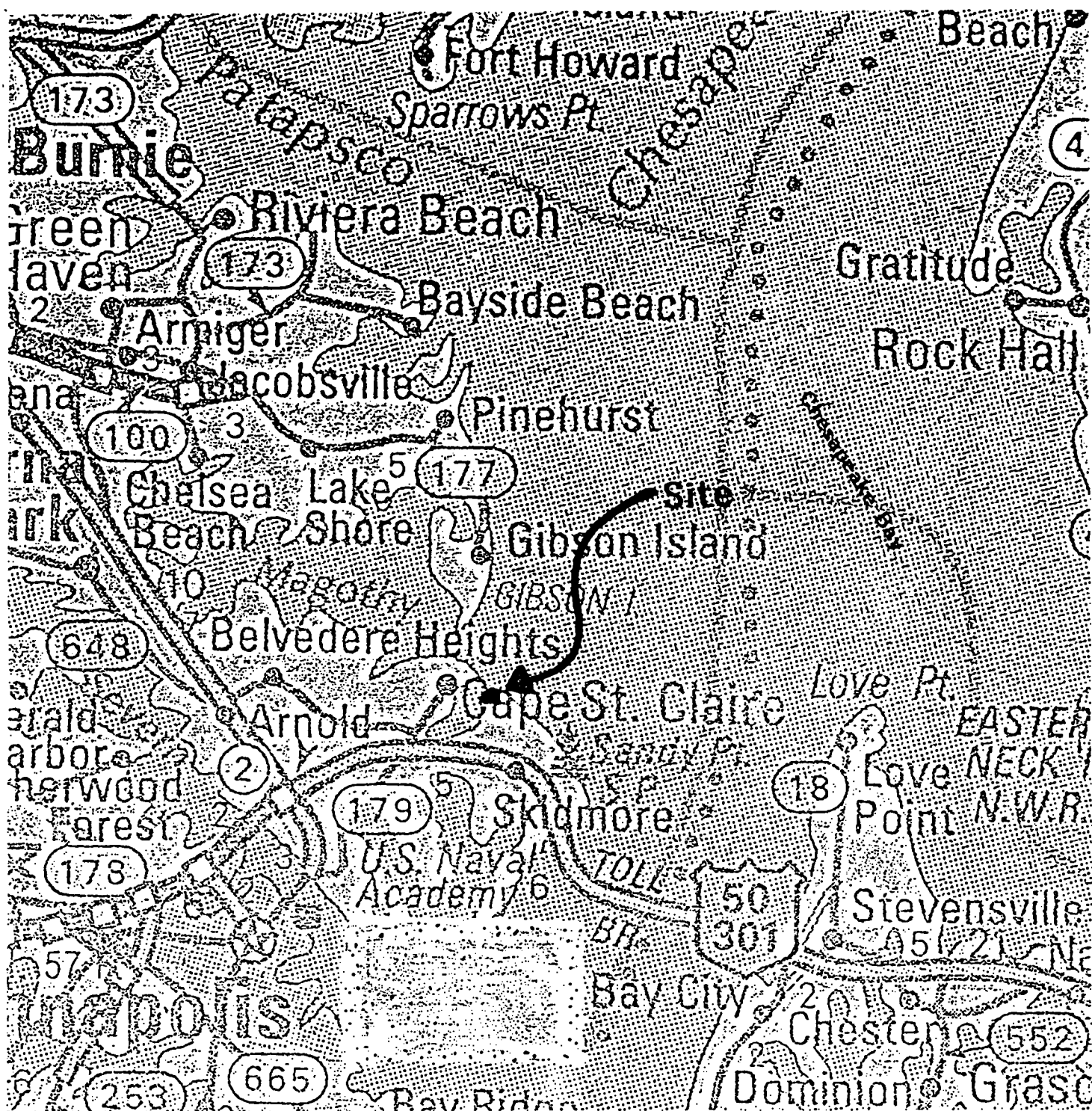


Figure 1. Site Vicinity Map

Scale 1" = 5 miles

III. FOREST INTERIOR BREEDING BIRD SURVEY

INTRODUCTION

Habitat protection for forest interior breeding birds has been mandated through the Chesapeake Bay Critical Area Law. These regulations require that management programs, including expanded buffers and time of year restrictions on development, be utilized to minimize the impacts to forested areas being utilized by forest interior breeding bird species. Forest interior habitat is typically considered forested areas of 100 or more contiguous acres or forested riparian corridors with a minimum width of 300 feet. Forest interior habitat may be present in forested tracts of smaller size when appropriate conditions are present.

To determine the status of forest interior breeding bird use of a forested area, the Maryland Department of Natural Resources has established guidelines that are used to designate an area as forest interior breeding bird habitat. The State has compiled a list of 19 species that require forest interior habitat to nest successfully. These species, shown in Table 1, have been further differentiated based on their sensitivity to disturbance. An area is considered to be forest interior breeding bird habitat, and subject to special management requirements, when four or more listed species or one species which is especially sensitive to disturbance are found to have a nesting status of "probable" or "confirmed".

Nesting status is determined according to the procedures outlined in the Maryland Breeding Bird Atlas. These procedures stipulate that sampling breeding bird surveys must meet the following minimum requirements:

1. Conducted only within the "safe dates" of breeding presence as shown in Table 1;
2. Conducted under appropriate weather conditions, and at a rate of at least three visits per site, each survey separated by an interval of at least one week;
3. Breeding Presence to be determined as "probable" or "confirmed" as described in the Maryland Breeding Bird Atlas Handbook;
4. Surveys to be conducted by a MD DNR qualified observer; and,
5. Surveys to be conducted in such a manner to sample throughout the habitat under study.

The Department of Natural Resources requested that the Woods Landing - Section 2 property be surveyed to determine the presence/absence of forest interior breeding bird habitat. The property contains 31 ± acres of forest adjacent to the Little Magothy River, thus meeting the

Table 1.

Forest Interior Breeding Birds

<u>Common Name</u>	<u>Scientific Name</u>	<u>Safe Dates</u>
Red-shouldered hawk	<i>Buteo lineatus</i>	5/1 - 8/31
Barred owl *	<i>Strix varia</i>	(no dates)
Whip-poor-will	<i>Caprimulgus vociferus</i>	5/10 - 7/15
Hairy woodpecker	<i>Picoides villosus</i>	3/15 - 8/31
Pileated woodpecker	<i>Drycopus pileatus</i>	3/15 - 8/31
Acadian flycatcher	<i>Empidonax virescens</i>	5/5 - 8/5
Yellow-throated vireo	<i>Vireo flavifrons</i>	5/25 - 8/10
Red-eyed vireo	<i>Vireo olivaceus</i>	6/1 - 7/31
Northern parula	<i>Parula americana</i>	6/1 - 8/31
Black and White warbler	<i>Mniotilta varia</i>	5/15 - 7/25
American redstart *	<i>Setophaga ruticilla</i>	6/10 - 7/20
Prothonotary warbler	<i>Protonotaria citrea</i>	5/10 - 7/20
Worm-eating warbler *	<i>Helmitheros vermivorus</i>	5/20 - 7/20
Swainson's warbler *	<i>Limnothlypis swainsonii</i>	4/20 - 8/31
Ovenbird	<i>Seiurus aurocapillis</i>	5/20 - 8/5
Louisiana waterthrush	<i>Seiurus motacilla</i>	5/1 - 8/10
Kentucky warbler *	<i>Opornis formosus</i>	5/25 - 7/15
Hooded warbler*	<i>Wilsonia citrina</i>	5/25 - 7/25
Scarlet tanager	<i>Piranga olivacea</i>	5/25 - 8/10

* species especially sensitive to disturbance

300 foot riparian corridor specification of typical interior habitat. Furthermore, the forested project site is contiguous with 100 foot forested buffers that are present on the adjacent developments.

SURVEY METHODOLOGY

Field surveys of the project were performed by a MD DNR Qualified observer, Appendix A, on the following dates: June 2, 9, 16, and July 7, 1995. Weather conditions on each sample date was appropriate and at least three sampling periods are within the listed "safe dates" for all species of concern.

Field survey of the project site was performed by random sampling within all portions of the forest. A general walk through of the entire site was performed on each survey date and then specific areas were targeted for more intensive survey. Areas were selected for in-depth survey for reasons of increased bird activity, presence of nesting holes or known nests, or areas of unique or undisturbed habitat within the project limits. Typically the general walk through of the site was initiated at 7:00 am and lasted 1.5-2 hours. Specific sampling was then performed for approximately 1-1.5 hours. Field sampling was performed for a minimum of three hours each survey. In all cases birds were identified by song and direct sight observation. During each field survey notes were compiled determining the most appropriate level of breeding activity observed.

FINDINGS

Twenty bird species were observed on or directly adjacent to the project site during our survey, (see Table 2). Of these species, only two are considered to be forest interior breeding birds. The red-eyed vireo (*Vireo olivacea*) and the Acadian flycatcher (*Empidonax virescens*) were both observed on the site. The nesting status of the vireo is considered probable due to territorial singing, pairs seen and agitated behavior. No behavior associated with the vireos observed could confirm their breeding, however several pairs could be considered probable. The Acadian flycatcher was confirmed nesting on the site. A pair of flycatchers was observed on two separate surveys constructing a nest in a flowering dogwood. This activity was noted on the first two surveys. Subsequent visits found no further evidence of the flycatcher, indicating that nest abandonment may have occurred. The nest site was located above an active walking trail and the continued pedestrian disturbances may have caused the abandonment.

The remaining birds observed on the site are typical of forest edge and urban forest habitats. Cardinal (*Cardinalis cardinalis*), tufted titmouse (*Parus bicolor*) and Carolina chickadee (*Parus carolinensis*) are the most common species using the forest. Numerous pairs of these species were confirmed nesting on the site. In total, twelve species were determined to be probable or confirmed nesters on the site. In addition, cowbirds (*Molothrus ater*), a nest parasite to many forest interior breeding birds, was observed within the forest on three of the four surveys.

Table 2.

List of Bird Species Observed on the Woods Landing - Section 2 Property

<u>Species</u>	<u>Nesting Status</u>
Chimney swift (<i>Chaetura pelagica</i>)	possible
Ruby throated hummingbird (<i>Archilochus colubris</i>)	possible
Red-bellied woodpecker (<i>Melanerpes carolinus</i>)	confirmed
Yellow-shafted flicker (<i>Colaptes auratus</i>)	confirmed
Acadian flycatcher (<i>Empidonax virescens</i>)	confirmed *
Great crested flycatcher (<i>Myiarchus crinitus</i>)	possible
Eastern wood-pewee (<i>Contopus virens</i>)	possible
Blue jay (<i>Cyanocitta cristata</i>)	probable
American crow (<i>Corvus brachyrhynchos</i>)	possible
Carolina chickadee (<i>Parus carolinensis</i>)	probable
Tufted titmouse (<i>Parus bicolor</i>)	confirmed
Carolina wren (<i>Thryothorus ludovicianus</i>)	confirmed
American robin (<i>Turdus migratorius</i>)	confirmed
Starling (<i>Sturnus vulgaris</i>)	confirmed
Red-eyed vireo (<i>Vireo olivaceus</i>)	confirmed *
Northern cardinal (<i>Cardinalis cardinalis</i>)	confirmed
Red-winged blackbird (<i>Agelaius phoeniceus</i>)	possible **
Baltimore oriole (<i>Icterus galbula</i>)	possible
Common grackle (<i>Quiscalus quiscula</i>)	possible
Brown-headed cowbird (<i>Molothrus ater</i>)	possible

* Forest interior breeding species

** confirmed nesting adjacent to property

Of the two forest interior breeding bird species found to be utilizing the property, the Acadian flycatcher is less tolerant of disturbance. Typically nesting within forested areas with a minimum size of 80 acres, this species does not respond favorably to fragmentation of the forest. The Acadian flycatcher requires true interior habitat and nesting frequency declines with proximity to the forest's edge. Forest management practices that produce large mature forests with tall closed canopies and low tree density favors this flycatcher.

The red-eyed vireo has been found nesting in wood lots of 12 acres in size, although a forest of 250 acres appears to be required to sustain a viable population. This bird is tolerant of forest clearing and fragmentation and is not affected by edge proximity. The red-eyed vireo prefers a closed canopy but will tolerate a wide range of canopy closure.

IV. RECOMMENDATIONS

Based on our findings, there does not appear to be any justification to provide special management practices for forest interior breeding birds on the Woods Landing - Section 2 Property. The forested area on and adjacent to the property is not of sufficient size to provide adequate forest interior breeding bird habitat. Activity on the site from adjacent landowners, coupled with a high occurrence of forest edge species, reduces the potential for this riparian forest to provide interior habitat.

V. AUTHORSHIP

This forest interior breeding bird survey was performed by John Canoles and Henry Leskinen. Messrs. Canoles and Leskinen have over 14 years of experience in natural resources assessments and inventories. Mr. Canoles received his B.S. in Natural Sciences with an Environmental Conservation Concentration from Towson State University in Towson, Maryland. Mr. Leskinen received his B.S. in Biological Sciences from St. Marys College of Maryland in St. Marys City, Maryland. Mr. Canoles has been recognized as a qualified observer of forest interior breeding birds in the Chesapeake Bay Critical Area (See Appendix A).

VI. LITERATURE CITED

Bushman, Ellen S. and Glenn D. Therres. 1988. *Habitat Management Guidelines for Forest Interior Breeding Birds of Coastal Maryland*. Maryland Department of Natural Resources. Wildlife Technical Publication 88-1. 50 pp.

Chesapeake Bay Critical Area Commission. 1986. *A Guide to the Conservation of Forest Interior Dwelling Birds in the Critical Area*. Guidance Paper No.1. 15 pp.

Appendix A

Qualified Observer Notification

RECEIVED

WOODS LANDING
COMMUNITY SERVICE
ASSOCIATION, INC.,

Petitioner,

v.

ANNE ARUNDEL COUNTY
BOARD OF APPEALS

Respondent.

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

Case No. C-97-36904 AA

OCT 23 1997

MILES & STOCKBRIDGE
EASTON, MD

BY _____

* * * * *

MEMORANDUM OPINION

This matter was before the Court on September 3, 1997 when the Court heard oral arguments of counsel and held the matter *sub curia*. For the reasons stated below, the Court will affirm the decision of the Anne Arundel County Board of Appeals.

BACKGROUND

This action is an appeal from a decision of the Anne Arundel County Board of Appeals ("Board"). In its March 17, 1997 written opinion, the Board affirmed the decision of the Anne Arundel County Department of Planning and Code Enforcement ("PACE") and granted final site plan and subdivision approval of Subdivision No. 73-59, Project No. 95-221, Woods Landing, Section 2, Plats 1 through 4 consisting of 114 townhouse lots on 31.16 acres ("Subdivision"). Testimony before the Board was taken on November 13 and 14, 1996.

ISSUES PRESENTED FOR REVIEW

(1) Whether the Petitioners have the necessary standing to file this appeal with regard to the below listed issues.

(2) Whether the Board of Appeals erred as a matter of law when it decided this case before PACE had the opportunity to evaluate the Subdivision for compliance with the 1957 Subdivision Regulations.

(3) Whether the Board of Appeals erred as a matter of law when it decided that the 1957 Subdivision Regulations do not require the Developer to provide sidewalks within the subdivision.

(4) Whether the Board of Appeals erred as a matter of law when it decided that the 1957 Subdivision Regulations do not require the Developer to provide roads thirty-four feet (34') in width within the Subdivision.

(5) Whether the Board of Appeals' approval of the final Subdivision plan violates the Critical Areas law because the Critical Areas Commission was not provided with a set of the final Subdivision plans for review.

(6) Assuming *arguendo* that the 1957 Regulations require sidewalks and roads thirty-four feet (34') in width, whether the Subdivision violates the State Critical Areas' Impervious Surface Limitation.

(7) Whether the Board of Appeals erred as a matter of law by permitting the Developer to duplicate or approximate the Woods Landing name for the Subdivision.¹

STANDARD OF REVIEW

The Court of Appeals, in a case involving a denial of a use permit, stated, "it is a clearly established rule in the law of zoning that a court may not substitute its judgment for that of the Zoning Board." White v. Spring, 109 Md. App. 692 (1996). When the judicial branch of government reviews a decision made by an administrative agency, the watchword is deference.

¹This issue was raised by the Petitioners in their legal memorandum but it was never discussed in oral arguments before the Court. At the hearing on this issue, Respondent's counsel informed the Court and the Petitioner of the Respondent's intent to change the name of the new Subdivision from "Woods Landing Two" to some other name which would not be objectionable to the Petitioner. The Petitioner raised no objection on the record and offered no argument in support of its position on this issue. Respondent's counsel later followed up with written correspondence which expressed the Respondent's willingness to change the Subdivision name from "Woods Landing Two" to "Water's Edge at Woods Landing." Having heard no objection of any kind from the Petitioners, the Court shall not discuss this issue in this opinion.

Courts must strive to uphold the decision of the administrative agency if there is any evidence which has made the issue fairly debatable. People's Counsel for Baltimore County, et al. v. Beachwood Limited Partnership, 107 Md. App. 627 (1995). However, "when the issues concern interpretation of federal and Maryland statutes, the administrative agency's decision is afforded no such deference." Beeman v. Dept. of Health, 105 Md. App. 147 (1995).

"The fairly debatable test is whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact finding or a substitution of judicial judgment for agency judgment." Umerley v. People's Counsel for Baltimore County, 108 Md. App. 497 (1996). "The reason for the fairly debatable standard is that zoning matters are, first of all, legislative functions and, absent arbitrary and capricious actions, are presumptively correct, if based upon substantial evidence, even if substantial evidence to the contrary exists." White v. Spring, 109 Md. App. 692 (1996). "Where a zoning authority decision was not fairly debatable, it was thus arbitrary, capricious and a denial of due process of law, because there was no substantial evidence to support the factual findings of the zoning authority." Evans v. Shore Communications, Inc., 112 Md. App. 284 (1996).

DISCUSSION

(1) Whether Petitioners have standing to challenge the decision of the Board of Appeals as it pertains to all other issues listed in the appeal before this Court.

In its memorandum in opposition to Petitioner's appeal, the Respondent argues that Petitioners do not have the necessary standing to maintain a cause of action before this Court because they have not been aggrieved by the Board's decision. Both Petitioner and Respondent cite Sugarloaf v. Dept. of Environment, 344 Md. 271 (1996), as the leading case in determining the

standing of parties in administrative appeals. The Court of Appeals in Sugarloaf held that "for a person or entity to maintain an action under the Administrative Procedure Act for judicial review of an administrative decision, the person or entity must both be a 'party' to the administrative proceedings and be 'aggrieved' by the final decision of the agency." Sugarloaf v. Dept. of Environment, 334 Md. 271, 287 (1996). The Court of Appeals further holds that "in order to be aggrieved, for purposes of judicial review, a person ordinarily must have an interest 'such that he is personally and specifically affected in a way different from . . . the public generally.'" Id. "The determination of whether a person has standing to maintain an action in court is exclusively a judicial function." Id.

In this case, Respondents argue that the Petitioners do not have standing because they failed to present evidence to the Board which would demonstrate that they were aggrieved in such a manner that is different from the general public. However, Petitioners argue, and this Court agrees that "in actions for judicial review of administrative land use decisions, "an adjoining, confronting or nearby property owner is deemed, *prima facie*, . . . a person aggrieved." Sugarloaf v. Dept. of Environment, 344 Md. 271 (1996). In addition, the person challenging the aggrievement has the burden of denying such damage in his answer to the petition for judicial review and of coming forward with evidence to establish that the Petitioner is not, in fact, aggrieved." Id., (citing Brvniarski v. Montgomery Co., 247 Md. 137 (1967)). Here, the Petitioners, both as a citizens' organization for Woods Landing I and as individual property owners, own property that directly adjoins the land which makes up Woods Landing II. In addition, the parties to this action are the same parties in the action which was before the Board. As such, the Petitioners, as property owners

in proximity to Woods Landing II, do possess the necessary standing required to maintain an action for judicial review of the Board's decision in this case.

(2) Whether the Board of Appeals erred as a matter of law when it decided this case before PACE had the opportunity to evaluate the Subdivision for compliance with the 1957 Subdivision Regulations.

This issue was not formally addressed by either party as an issue to be considered by this Court. However, the Petitioners do raise this issue by means of a footnote in their memorandum. As such, the Court will discuss this issue in order to provide clarification in the determination of whether the Board's decision is merely a review of PACE's decision or an altogether *de novo* action.

In this case, all parties agree, as does this Court, that the 1957 Code is the applicable body of law because the initial Subdivision Plan was submitted within 50 days of the current Code becoming effective. Here, PACE reviewed the Subdivision Plan while applying current Code provisions. As a result, the Petitioners argue that the Board erred when it reviewed PACE's decision and then affirmed it where PACE did not have the opportunity to review these facts while applying the 1957 Code. The Court does not agree with the Petitioner's argument because the hearing before the Board in its review of PACE's decision is completely *de novo*. Boehm v. Anne Arundel County, 54 Md. App. 497 (1983).

A trial *de novo* or a *de novo* hearing of the matter under "review" may be new and different from the trial or hearing before the administrative agency in respect of one or more, or all, of the following: evidence heard or facts considered, especially where the administrative agency did not afford a hearing; issues raised; findings made; grounds for decision; and the view of the evidence heard or facts considered, the opinion as to the preponderance of the evidence, and the proper judgment to be reached or action to be taken in accordance with the evidence or facts thus viewed. Id. at 510, (quoting 2 Am. Jur. 2d Administrative Law § 698 (1962)).

In this case, the Board heard testimony and examined evidence at a hearing where all parties were present and/or represented by counsel. The Board applied the 1957 Code to the facts of this case in coming to its decision. In its written opinion, the Board stated grounds for its decision. Finally, the Board provided the parties with a judgment which stemmed from its analysis of the evidence as applied under the 1957 Code. As such, this Court holds that the Board's actions were, in every way, representative of an action which was completely *de novo* in nature and function.

(3) Whether the Board of Appeals erred as a matter of law when it decided that the 1957 Subdivision Regulations do not require the Developer to provide sidewalks within the Subdivision.

(4) Whether the Board of Appeals erred as a matter of law when it decided that the 1957 Subdivision Regulations do not require the Developer to provide roads thirty-four feet (34') in width within the Subdivision.

The discussion of these issues can be settled with an analysis of facts and evidence that are common to both. The Petitioner claims that the Board erred when it failed to find that the 1957 County Code ("1957 Code") required that county roads be thirty-four feet (34') in width and that sidewalks be constructed for all group homes of the type which the proposed Subdivision or Development is to consist of. For the reasons below, the Court does not agree with Petitioner's argument and will affirm the Board's findings pertaining to these issues.

In this case, the Board heard testimony and reviewed evidence from several different sources before making its decision to affirm PACE's decision and grant approval of the final Subdivision plan. With regard to the required minimum road width, Section 32-27, of the Subdivisions Chapter of the 1957 Code is applicable. Petitioner argues that Section 32-27(c) and (d) should be read together to require the Respondent to install roads which are thirty-four feet (34') wide with sidewalks within the Subdivision. Specifically, Section 32-27(d) requires that "for group house and

general apartment areas: roads are to be thirty-four feet (34') in width plus curbs and sidewalks. Part (d) refers back to Part (c) for specifications that sidewalks shall be "a minimum of four feet in width of concrete and not less than four inches thick." Anne Arundel County Code ch. 32 § 32-27 (1958).

Petitioner claims that the paved access ways in and around the Subdivision should be required to adhere to the standards in the 1957 Code because they are roads which are subject to these standards. In applying the fairly debatable test as discussed *supra* in Umerley v. People's Counsel for Baltimore County, 108 Md. App. 497 (1996), the Court agrees with the Board which found that the paved surfaces for vehicular traffic were not roads or streets by definition. Rather, these paved surfaces were no more than drive aisles or private lanes used for allowing residents to make unobstructed left or right turns into parking courts. Specifically, the testimony before the Board from a professional civil engineer and a representative of PACE indicated that the roads in the Subdivision were not roads at all but, in fact, were no more than parking lanes. As such, the Board found, and this Court agrees, that Section 32-27 is inapplicable in this case and neither thirty-four foot (34') wide roads nor sidewalks are required in the Subdivision pursuant to that section.

(5) Assuming *arguendo* that the 1957 Regulations require sidewalks and roads thirty-four feet (34') in width, whether the Subdivision violates the State Critical Areas impervious surface limitation.

Petitioner argues that should this Court find that pursuant to the 1957 Regulations the Respondent is required to construct roads thirty-four feet (34') in width with sidewalks of four feet (4') in width; then the Subdivision would be in violation of State Critical Areas' Impervious Surface Limitations. As discussed *supra*, this Court agrees with the Board where it finds that by definition, the paved surfaces of the Subdivision are not, by definition, roads. As such, these surfaces are not

required to meet the 1957 Regulatory requirements that they be thirty-four feet (34') wide with sidewalks. However, while the Board found that the Subdivision did not have to meet regulatory specifications for roads as defined by the 1957 Code, it did find, and this Court agrees, that the Subdivision must comply with the State Critical Areas' Impervious Surface Limitation of fifteen percent (15%). Based upon its finding above, the Board goes on to find that the final Subdivision plan does not violate the State Critical Areas' Impervious Surface Limitation of fifteen percent (15%).

The Board heard testimony from several witnesses who stated that the Subdivision did not violate the Fifteen percent Impervious Surface Limitation. A representative from PACE testified that PACE had reviewed the Developer's engineer's calculations and approved them. In addition, the Board heard testimony from a representative of the Commission who testified that she had reviewed the Subdivision plans and found that they complied with the fifteen percent limitation. As such, she stated that the Commission recommended approval of the Subdivision. The Board also heard from a registered professional engineer for the Respondent. He also testified as an expert witness that the Subdivision did not violate the fifteen percent limitation. Finally, the Respondent had the final Subdivision plan reviewed by an independent expert who also testified before the Board. The expert was registered as a professional engineer and a professional land surveyor and testified that the final Subdivision plan not only met the fifteen percent limitation but further reduced the total amount of impervious surfaces by using straight curbs instead of rolled curbs. The resulting total impervious surface of the Subdivision is 14.96 down from 14.97 as testified to by the Respondent's first engineer. In light of the evidence that was presented to the Board, it is clear that when applying the fairly debatable standard, there was substantial evidence to indicate that the Board

was correct in making findings of fact which ultimately led to its approval of the Subdivision plan. As such, the Court is required to give deference to the findings of fact of the Board and affirm its decision.

(6) Whether the Board of Appeals' approval of the final Subdivision plans violates the Critical Areas law because the Critical Areas Commission was not provided with a set of the final Subdivision plan for review.

Petitioners claim that the final Subdivision plan upon which this appeal is based was not submitted before the Critical Areas Commission ("Commission"). As such, the Petitioners argue that the Board erred when it failed to ensure that the Commission was given the opportunity to review the final Subdivision plan so as to assure that it complied with the fifteen percent (15%) State Critical Areas Impervious Surfaces Limitation. Section 8-1811 of the Natural Resources Article specifies "that the Commission shall adopt regulations identifying those classes of applications for project approval of which the Commission wishes to receive notice." Md. Code Ann., Natural Resources § 8-1811 (1990). Section 8-1811(b)(3) further specifies that "the local approving authority may not process an application of which a copy must be sent to the Commission. Until the local approving authority has received notice of receipt from the Commission, any action of the local approving authority is in violation of this paragraph and void." Md. Code Ann., Natural Resources § 8-1811(b)(3) (1990).

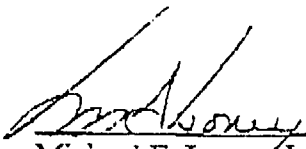
In this case, the Petitioners argue that the final Subdivision plan marks a substantial change from the earlier Subdivision plans because the final Subdivision Plan utilizes different curbing, which resulted in a six percent (6%) difference in impervious surface coverage. As such, the Petitioner argues that the final Subdivision plan should be considered an initial plan which the Board is required to submit to the Commission for review. The Petitioner then argues that the because the

Commission did not have the opportunity to review the final Subdivision plan, the Board's decision should be reversed because it was void pursuant to Section 8-1811.

In response, the Respondent argues that the final Subdivision plan does not indicate a substantial change from earlier Subdivision plans. Rather, Respondents argue that the revised final Subdivision plan merely reflects a decreased impervious surface coverage by substituting straight curbs for rolled curbs. Respondents also argue that there was evidence before the Board which indicates that the Commission did review the initial Subdivision plan and did grant its approval on that basis. At no time was the witness from the Commission ever asked whether the Commission ever reviewed the final Subdivision plan or even if it was required. As such, the Respondents suggest that this Court must employ the fairly debatable test and hold that the Board correctly came to its proper findings.

The Court agrees with the Respondent and holds that the Board did properly approve the final Subdivision plan of which the Commission's recommendations were one of the factors considered in its approval. Section 8-1811 is clear when it specifies that "an applicant for project approval or the local agency authorized to grant project approval on an application in any of the identified classes shall send to the Commission in accordance with the regulations and any other instructions of the Commission, a copy of every pending or new application for approval that is in any of the identified classes." Md. Code Ann., Natural Resources § 8-1811 (1990). In this case, the initial or original Subdivision plan was submitted to the Commission as testified to before the Board. The Commission gave its approval based upon the initial Subdivision plan. The Board, while relying in part, upon the Commission's recommendations, granted its approval of the final Subdivision plan. As such, this Court will hold that the Board's decision is based upon substantial

evidence which can be said to be fairly debatable so as to not be arbitrary and capricious. The final Subdivision plan is not required to be sent to the Commission for review before the Board may approve it. }



Michael E. Loney, Judge
Circuit Court for Anne Arundel County

October 21, 1997

Copies to:

Richard A. DeTar
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601

Harry C. Blumenthal
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Rd., Suite 240
Annapolis, MD 21401

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

WOODS LANDING
COMMUNITY SERVICE
ASSOCIATION, INC.

Plaintiff,

v.

ANNE ARUNDEL COUNTY
BOARD OF APPEALS

Defendant.

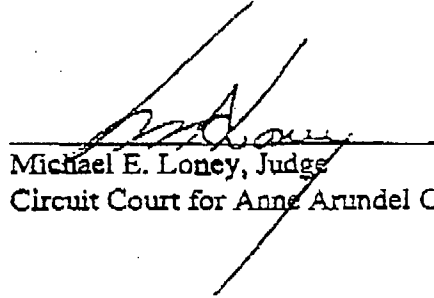
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* Case Number: C-97-36904 AA

ORDER

Upon consideration of Petitioner's Appeal for Judicial Review of the decision of the Anne Arundel County Board of Appeals, for the reasons set forth in the Court's accompanying Memorandum Opinion, it is hereby this 21st day of October 1997, by the Circuit Court for Anne Arundel County, Maryland

ORDERED, that the decision of the Anne Arundel County Board of Appeals be and is hereby affirmed.


Michael E. Loney, Judge
Circuit Court for Anne Arundel County

Copies to:

Richard A. Detar
Miles and Stockbridge, P.C.
101 Bay Street
Eaton, Maryland 21601

Harry C. Blumenthal
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Road,
Suite 240
Annapolis, Maryland 21401

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

WOODS LANDING COMMUNITY
SERVICE ASSOCIATION, et al.

Appellants

v.

COUNTY BOARD OF APPEALS FOR
ANNE ARUNDEL COUNTY, MARYLAND

Appellee

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Case No. C-97-36904.AA

* * * * *

MEMORANDUM IN OPPOSITION TO APPEAL

Woods Landing II Joint Venture, Developer, by its attorneys,
Harry C. Blumenthal and Blumenthal, Delavan & Williams, P.A.,
submits this Memorandum In Opposition To Appeal.

I. INTRODUCTION

Developer adopts the Introduction set forth in Appellants'
Memorandum, including the references set forth in footnote (1).

II. ISSUES ON APPEAL

A. Did the Board of Appeals err when it decided that the
1957 Subdivision Regulations do not require the Developer to
provide sidewalks and 34-feet wide roads in private parking courts?

B. Did the Board of Appeals err when it decided that the
Subdivision did not violate the State Critical Areas impervious
surface limitation?

C. Did the Board of Appeals err by not deciding that the
Subdivision violates the State Critical Areas law due to the
submittal of plans to and review by the Critical Areas Commissions?

D. Did the Board of Appeals err by allowing the Subdivision name of Section Two, Woods Landing, to be used?

E. Do the Appellants have the necessary standing to file this appeal with regard to Issues A, B, and C?

III. ARGUMENT

When reviewing a decision of a county board of appeals, the Circuit Court must determine whether the board's decision is "in accordance with law." Md. Ann. Code Art. 25A, § 5(U) (1996); Anne Arundel County Charter § 604 (1985 & Supp. No. 11); Crofton Partners v. Anne Arundel County, 99 Md. App. 233, 242, 636 A.2d 487, 491 (1994). A board's decision is not in accordance with law if the decision is arbitrary, capricious, or illegal. Crofton Partners, 99 Md. App. at 242, 636 A.2d at 491; see also Mortimer v. Howard Research & Dev. Corp., 83 Md. App. 432, 442, 574, A.2d 750, 755 ("[T]he circuit court's role . . . [is] to decide whether the Board of Appeals decision was arbitrary, illegal or capricious."), cert. denied, 321 Md. 164, 582, A.2d 499 (1990).

Where the issue on judicial review involves a board's fact-finding, a court must employ the deferential "fairly debatable" test, and may not substitute its judgment for that of the board if reasonable persons, weighing the evidence, could reach different conclusions. Mortimer, 83 Md. App. at 441, 574 A.2d at 754-55. Stated otherwise, if a board's factual conclusions are based on substantial evidence, a reviewing court must affirm those conclusions. See Gray v. Anne Arundel County, 73 Md. App. 301, 309, 533 A.2d 1325, 1329 (1987).

A. Did The Board of Appeals Err When It Decided That The 1957 Subdivision Regulations Do Not Require The Developer To Provide Sidewalks And 34-Foot Wide Roads In Private Parking Courts?

Plats of the Subdivision indicate a 60-foot wide public road (Woods Landing Drive) terminating in a cul-de-sac adjacent to private lanes and private parking areas. (Pet. Ex. 31) Daniel Werner, qualified as an expert professional registered civil engineer (Tl. 177-79), testified that various lanes shown on the plats of the Subdivision leading from Woods Landing Drive were private access drives, also leading to private parking spaces. (Tl. 92) Mark Wedemeyer, a planner with the Anne Arundel County Department of Planning & Code Enforcement, having responsibility for review of the Subdivision (Tl. 117) stated that internal parking drive aisles are not roads or streets as those terms are defined, but are merely considered part of the parking lot as a drive aisle, and no sidewalks are required for such private drive aisles, all of which has been the consistent position taken by the Department of Planning & Code Enforcement. He further testified that even though private drive aisles were called private lanes on the Subdivision Plats, they are still drive aisles. (Tl. 148)

The Subdivision plats indicate the extension of the existing public Woods Landing Drive, 60 feet in width, being extended into the Subdivision and terminating in a cul-de-sac. (Pet. Ex. 31) The unrefuted testimony of the County planner and the Developer's engineer was that designations on the Subdivision Plat of private

lanes were not intended to be nor were considered to be streets, but were private drive aisles, from which a vehicle can make an unobstructed left or right turn into a parking court. Because the private lanes were not streets, there were no Code requirements applicable to width and/or sidewalks. The 1957 Anne Arundel County Code,¹ (the "Regulations") Chapter 32, Section 32-1, defines a street as "[A] right-of-way at least 40-feet wide which provides primary access to abutting properties." Woods Landing Drive is a street, at least 40-feet wide and provides primary access to the abutting properties, which are served by private drive aisles.

The Board concluded from the unrefuted testimony of the County planner and the Developer's engineer that the private lanes shown on the Subdivision Plats were not streets. That is a finding of fact, and not a conclusion of law. As such, this Court must employ the differential fairly debateable test, and may not substitute its judgment for that of the Board. See Mortimer and Gray, *supra*.

Assuming, *arguendo*, that the private lanes were streets, Code, Sec. 32-24(b) provides that "[P]roposed streets shall be extended to the boundary lines of the tract to be subdivided, . . . unless, in the opinion of the planning & zoning commission, such extension is not necessary or desirable for the coordination of the layout of the subdivision. . ." (emphasis added). As a matter of fact, there

¹ All subsequent references in this Memorandum to the 1957 Anne Arundel County Code will use the short form citation "Code." The Code was submitted as Pet. Ex. 23, and Appellants/Protestants have appended a copy thereof to their Memorandum filed with the Court.

was no testimony that private lanes would not adequately serve the Subdivision and function properly.

B. Did The Board Of Appeals Err When It Decided That The Subdivision Did Not Violate The State Critical Areas Impervious Surface Limitation?

The registered professional engineer for the Developer, qualified as an expert witness, testified that the Subdivision Plats do not exceed the 15% State Critical Area's impervious surface limitation. (T1. 197) He also testified that the impervious areas are shown on sediment control and grading plans ("Development Plans"), and are conceptual plans, and frequently change throughout the development process. If such Development Plans change to increase impervious area in one area, to comply with the applicable law, other impervious areas must be decreased. Changes frequently are necessary to meet field conditions or changes desired in the development process. (T1. 198)

Regina Esslinger, the Chief of Project Evaluation Director of the Chesapeake Bay Critical Areas Commission (T2. 64) testified that the Development Plans which she reviewed complied with the 15% impervious surface limitation requirements (T2. 65). She testified that the Development Plans were submitted to her by the County (T2. 69) and that the Critical Areas Commission recommended approval (T2. 70).

Penny Chalkley, the environmental reviewer for the Department of Planning & Code Enforcement (T2. 152) testified that she

reviewed the Developer's engineers' calculations and approved them. (T2. 153 and 154).

The Developer had the latest Development Plans reviewed by an independent expert. Edward L. Lowman, a registered professional engineer and a professional land surveyor, and qualified as an expert in those fields (T2. 164), testified that he reviewed the amended Development Plan (Prot.Ex.,T2.166) which substituted a "straight curb" for a "rolled curb" (T2. 166) which would reduce impervious area by approximately 5,000 square feet (T2. 168). He found as a matter of fact that by utilizing the straight curb, the impervious area of the Subdivision was 14.96% as contrasted with the 14.97% testified to by the Developer's principal civil engineer. (T2. 169) Mr. Lowman confirmed the testimony of Mr. Werner that Development Plans are always subject to change, and if impervious areas increase slightly in one portion of the Subdivision, they would have to be matched by a corresponding decrease to stay within the 15% impervious requirement. (T2. 172)

Mr. Lowman further testified that during the time that the Development Plans were formulated, the County considered rolled curb as having the same impervious coverage as straight curb (T2. 192), which interpretation was changed. He testified that the revised Development Plans, under any interpretation, contained less than 15% impervious coverage (T2. 193) The only testimony to the contrary was from William Craig, a surveyor employed by the Protestants, who was not qualified as a professional land surveyor, but was qualified as a property line surveyor. (T2. 73) His

calculations applicable to the original Development Plans indicated that the 15% impervious limitation was exceeded by 4,359 square feet (T2. 80). He had reviewed the original Development Plans (Prot. Ex. 2), but only had 15 minutes to review the revised Development Plans (T2. 84). He testified there was no substantive or substantial difference between the original Development Plans and the revised Development Plans (T2. 95 and 96), although he did not actually measure the revised Development Plans (T2. 101).

Whether the Development Plans filed in conjunction with a Subdivision demonstrate compliance with a 15% impervious area limitation, is a question of fact. The undisputed and unrefuted testimony is that while the Subdivision Plats had not changed, the supporting Development Plans had been modified to reflect a change in the County's policy regarding "rolled curbs" as compared to "straight curbs." When the original Development Plans for the Subdivision were formulated, the County considered rolled curbs to have the same impervious area as straight curbs. When that interpretation subsequently was changed, the Development Plans were modified to reflect straight curbs in the lieu of rolled curbs.

Mr. Lowman, an independent professional engineer and professional land surveyor, and qualified as an expert in both disciplines, testified that the revised Development Plans, utilizing straight curbs, did not exceed the 15% impervious coverage limitation. The only testimony to the contrary came from Mr. Craig, a property line surveyor, who candidly admitted that he had only reviewed the revised Development Plans for 15 minutes, and

had not made actual measurements of the revised Development Plans.

Predicated upon all of the testimony, the Board found that as a matter of fact, the Subdivision and the supporting Development Plans met the 15% impervious limitation requirements. Therefore, this Court must employ the fairly debatable test, and may not substitute its judgment for that of the Board. See Mortimer and Gray, supra.

C. Did The Board Of Appeals Err By Not Deciding That The Subdivision Violates The State Critical Areas Law Due To The Submittal Of Plans To And Review By The Critical Areas Commissions?

Protestants complain that the revised Development Plans (which merely decreased impervious coverage by substituting straight curbs for rolled curbs) violates Section 8-1811, Natural Resources Article, Md. Code Annotated. Protestants are incorrect.

Section 8-1811(b) states that: "The Commission shall adopt regulations identifying most classes of applications for project approval of which the Commission wishes to receive notice." And (b)(2) states: ". . .[a]n applicant for project approval or the local agency authorized to grant project approval on an application in any of the identified classes shall send to the Commission in accordance with the regulations and any other instructions of the Commission, a copy of every pending or new application for approval that is in any of the identified classes."

There is no testimony or evidence before the Board that the revision of a Development Plan (resulting only in the decrease of

impervious area by substituting one type of curb construction for another) is within "those classes of applications for project approval of which the Commission wishes to receive notice."

Furthermore, the revised Development Plans were not a "new application for approval" in any event, but merely were revised plans showing less impervious area than the original plan which had been reviewed and approved by the Chesapeake Bay Critical Areas Commission. Assuming, *arguendo*, that the revised Development Plans needed to be reviewed by the Critical Areas Commission, Protestants allege that they were not received or reviewed by the Critical Areas Commission, by improperly stating that Regina Esslinger "testified that the Critical Areas Commission did not receive or review the final Development Plan." (Appellants/Protestants Memorandum p. 12). Ms. Esslinger testified that she reviewed the original Development Plan, among other things, and found that the Subdivision complied with all requirements. (T2. 66) She was never asked whether she reviewed the revised Development Plans or whether a review even was necessary when the only change was a decrease in impervious area.

Ms. Esslinger testified immediately prior to William Craig (the property line surveyor employed by Protestants), and was present during the testimony of William Craig, the County planner, the County environmental reviewer and Mr. Lowman, the independent professional civil engineer and professional land surveyor. At no time did Ms. Esslinger indicate that the Critical Area Commission did not approve the Development Plans. The Protestants have

misstated the testimony of Ms. Esslinger and have improperly characterized her testimony. The Board of Appeals' approval of the Subdivision infers that they found as a matter of fact that all required applications had been submitted to the Critical Areas Commission. Therefore, this Court must employ the differential fairly debatable test, and may not substitute its judgment for that of the Board. See Mortimer and Gray, supra.

D. Did The Board Of Appeals Err By Allowing The Subdivision Name Of Woods Landing, Section Two To Be Used?

The Regulations provide that the name of the subdivision "[s]hall not duplicate or closely approximate the name of any other subdivision in the county." (Emphasis added). (Pet. Ex. 23, and Code Sec. 32-41B). The original plat of Woods Landing, Section One (Pet. Ex. 29), refers to numerous areas "not included in Section One," "reserve parcel for future development," and "NOT APPROVED AS PART OF THIS PLAT." These areas are contiguous with Section One Recreation Area directly across Woods Landing Drive from houses in Section One. It is obvious that the Section One Plats contemplated further subdivision of contiguous property, to be designed as Section Two. There would be no need to utilize the designation of "Section One" if there were going to be but one section. The use of the designation "Section Two, Woods Landing" does not violate the prohibition against using the same name of any other subdivision, as Section Two is part of the same subdivision as Section One.

Protestants claim that a Declaration of Easement (Prot. Ex. 1) mandates that Section Two must change its name, as Section Two would not be developed in common with Section One. It is not uncommon for two different sections of the same subdivision to be developed by different developers and with different housing types. If it had been the intention of the parties to the Declaration of Easement that the name of Section Two, Woods Landing should be changed, it would have been easy enough to have provided such a requirement. Protestants incorrectly read into the Declaration of Easement non-existing provisions.

The Board found as a matter of fact that Section One and Section Two were not two separate subdivisions, but merely are two separate sections of the same subdivision. Therefore, this Court must employ the differential fairly debateable test, and may not substitute its judgment for that of the Board. See Mortimer and Gray, supra.

E. Do The Appellants Have The Necessary Standing To File This Appeal With Regard To Issues A, B, and C?

Protestants do not have the required standing to maintain an appeal to the Courts regarding alleged deficiencies in private roads, private sidewalks and alleged deficiencies in impervious surface limitations.

Assuming, *arguendo*, that there are such deficiencies, there was no testimony whatsoever before the Board that the Protestants would have the right to use private drives and private walkways located in Section Two. There was no testimony whatsoever before

the Board that the 32/100 of one percent of alleged excess impervious area would be injurious to the Protestants, or at least injurious to them differently than the public generally.

A person may properly be a party before the Board hearing, but not be aggrieved for purposes of standing to bring an action for judicial review. The most recent decision succinctly summarizing more than 30 years of standing issues is Sugarloaf Citizen's Ass'n, et al. v. Department of Environment, et al., 344 Md. 271, 686 A.2d 605 (1996) wherein the Court held:

[1] The cases in this Court, . . . recognize a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision. Maryland-Nat'l v. Smith, 333 Md. 3, 11, 633 A.2d 855, 859 (1993). See Medical Waste v. Maryland Waste, 327 Md. 596, 611-614, 612 A.2d 241, 248-250 (1992) (organization was a party at the administrative proceeding but lacked standing to maintain a judicial review action.) *Supra*, at p. 613.

[2] While the term "aggrieved" is not defined in the Administrative Procedure Act, we have held that the statutory requirement that a party be "'aggrieved' mirrors general common law standing principles applicable to judicial review of administrative decisions." Medical Waste v. Maryland Waste, *supra*, 327 Md. at 611 n. 9, 612 A.2d at 248-249 n. 9; Bryniarski v. Montgomery Co., 247 Md. 137, 143-146, 230 A.2d 289, 294-295 (1967). Accordingly, in order to be "aggrieved" for purposes of judicial review, a person ordinarily must have an interest "'such that he is personally and specifically affected in a way different from ... the public generally.'" Medical Waste v. Maryland Waste, *supra*, 327 Md. at 611 n. 9, 612 A.2d at 248-249 n. 9, quoting Bryniarski v. Montgomery Co., *supra*, 247 Md. at 144, 230 A.2d at 294. See Maryland-Nat'l v. Smith, *supra*, 333 Md. at 11, 633 A.2d at 859; Abramson v. Montgomery County, 328 Md. 721-733, 616 A.2d 894, 900 (1992); DuBay v. Crane, 240 Md. 180, 185, 213 A.2d 487, 489-490 (1965) ("the [administrative] decision must not only affect a matter in which the protestant has a specific

interest or property right but his interest therein must be such that he is personally and specially affected in a way different from ... the public generally"). *Supra*, at p. 614.

The Anne Arundel County Charter, Sec. 604, provides that persons aggrieved by the decision of the Board may appeal such decision to the Circuit Court of Anne Arundel County. Protestants presented no evidence that the approval of the Subdivision would be injurious to them, or when be injurious to them personally and specially in a way different from the public generally.

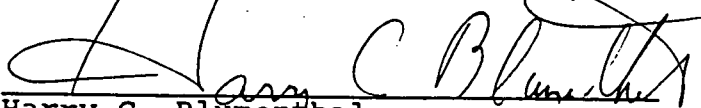
IV. CONCLUSION

The Subdivision satisfies the requirements of the Regulations. The Board made findings of fact, predicated upon substantial evidence. The Protestants do not have the required standing to file an appeal regarding all issues raised (with the possible exception of their challenge to the use of the name "Section 2, Woods Landing"). With regard to Protestants' challenge to the use of the Subdivision name, Protestants' allegations are incorrect both as a matter of fact and law.

Therefore, Woods Landing II Joint Venture respectfully requests the Court to uphold the Opinion of the County Board of Appeals for Anne Arundel County, Maryland, and to deny the within appeal to this Court.

Respectfully submitted,

BLUMENTHAL, DELAVAN & WILLIAMS, P.A.


Harry C. Blumenthal
170 Jennifer Rd., Suite 240
Annapolis, MD 21401

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July 1997, a true and correct copy of the Memorandum in Opposition to Appeal was mailed by first class mail, postage prepaid, to Richard A. DeTar, Esq., Miles & Stockbridge, P.C., 101 Bay Street, Easton, MD 21601 and Robert M. Pollock, Esq., Office of Law, 2662 Riva Rd., Annapolis, MD 21401.


Harry C. Blumenthal

c/pleadings/woodsInd.mem

**IN THE CIRCUIT COURT OF MARYLAND
FOR ANNE ARUNDEL COUNTY**

**WOODS LANDING COMMUNITY *
SERVICE ASSOCIATION, et al.**

Appellants,

v.

Case No. C-97-36904.AA

**ANNE ARUNDEL COUNTY *
BOARD OF APPEALS**

Appellee.

* * * * *

MEMORANDUM IN SUPPORT OF APPEAL

Appellants, Woods Landing Community Service Association, Inc., Howard and Pamela Hale and Albert and Betsy Kulle (collectively "Woods Landing"), by their attorneys, Richard A. DeTar and Miles & Stockbridge, P.C., hereby submit this Memorandum In Support Of Appeal pursuant to Rule 7-207.

I. INTRODUCTION

On or about May 17, 1996, the Anne Arundel County Department of Planning and Code Enforcement ("PACE") granted final site plan and subdivision approval for Subdivision No. 73-519, Project No. 95-221, Woods Landing, Section 2, Plats 1 through 4, consisting of 114 townhouse lots on 31.16 acres (hereinafter the "Subdivision" or the "Developer"). (T.2 at 133 & Prot. Ex. 2 at p.1).¹ Pursuant to Woods Landing's appeal of

¹ Throughout this Memorandum, references to the transcript of the hearings before the Board of Appeals are indicated by use of the letter "T.1" for the testimony heard on November 13, 1996 and "T.2" for testimony (continued...)

PACE's ruling, and after two (2) days of testimony on November 13 and November 14, 1997¹ and submission of briefs, in a Memorandum of Opinion dated March 17, 1997, the Anne Arundel County Board of Appeals (the "Board of Appeals") affirmed PACE's ruling, effectively granting approval of the Subdivision. The Memorandum of Opinion has been made a part of the record and is referred to herein as the "Decision". This Appeal is from the Board of Appeals' Decision.

The Proposed Subdivision is situated in the Critical Areas and is therefore subject to the Critical Areas laws and regulations.

II. ISSUES ON APPEAL

- A. Whether the Board of Appeals erred as a matter of law when it decided that the 1957 Subdivision Regulations do not require the Developer to provide sidewalks within the Subdivision?
- B. Whether the Board of Appeals erred as a matter of law when it decided that the 1957 Subdivision Regulations do not require the Developer to provide roads thirty-four feet (34') in length within the Subdivision?
- C. Assuming *arguendo* that the 1957 Regulations require sidewalks and roads thirty-four feet (34') in width, whether the Subdivision violates the State Critical Areas impervious surface limitation?

¹(...continued)

heard on November 14, 1996, followed by the page number(s) on which the fact(s) cited appear. References to the Exhibits introduced into evidence before the Board of Appeals are as follows: (1) "Pet. Ex." for exhibits introduced by the Developer, and labeled by the Board of Appeals as "Petitioner;" (2) "Prot. Ex." for Exhibits introduced by Woods Landing, et. al., and labeled by the Board of Appeals as "Protestants;" and (3) "C. Ex. ____" for exhibits introduced by PACE, and labeled by the Board of Appeals as "County."

- D. Whether the Board of Appeals approval of the final Subdivision plans violates the Critical Areas law because the Critical Areas Commission was not provided with a set of the final Subdivision plans for review?
- E. Whether the Board of Appeals erred as a matter of law by permitting the Developer to duplicate or approximate the Wood Landing name for the Subdivision?

III. ARGUMENT

The Developer, the Board of Appeals and even Woods Landing agree that the proposed Subdivision is not subject to the regulations contained in the current Anne Arundel County Code, Article 26, Subdivisions ("Current Code").² Rather, because (among other reasons) the Developer's preliminary plan approval was filed within fifty (50) working days of the effective date of Bill 23-94 (Pet. Ex. 1 and 19), and preliminary plan approval was obtained on August 6, 1984 (Pet. Ex. 2), the controlling local regulations are set forth in the 1957 Anne Arundel County Code (the "1957 Regulations") governing subdivisions. A true and correct copy of the 1957 Regulations (App. Ex. 23) is attached hereto for the convenience of the Court as Exhibit A.

Although it is now acknowledged by all that the 1957 Regulations apply to the Proposed Subdivision, it was not designed, nor was it evaluated by PACE, for compliance with the 1957 Regulations.³ Because of this, not surprisingly, the Subdivision fails to satisfy

² Woods Landing filed this appeal. It is not appealing the Board of Appeals' Decision that the 1957 Regulations govern this proposed Subdivision. Because no cross appeal was filed, this particular issue is not before the Circuit Court.

³ Indeed, Mark Wedemeyer testified that PACE evaluated and approved the Subdivision for compliance
(continued...)

the requirements set forth in the 1957 Regulations.

A. The Proposed Subdivision Fails To Comply With The Sidewalk Requirement

Section 32-35 of the 1957 Regulations, Sidewalks, states "[s]idewalks shall be placed on one or both sides of every street, when required in Section 32-27 of this Code." See Exhibit A at page 832. Section 32-27, Minimum Pavement Widths and Road Construction, primarily explains the required pavement width for road construction in subdivisions consisting of various lot sizes. It also provides for sidewalks.

The required width of pavement for the streets and the requirement for sidewalks in Section 32-27 increases commensurate with an increase in the density of development within a subdivision.⁴ Id. This is, of course, a logical proposition because the more people there are within a subdivision, the greater the safety need for wide streets and sidewalks.

Sub-paragraphs (a) and (b) within Section 32-27 pertain to subdivisions consisting of larger lots (i.e., less density) than that proposed for the Subdivision. Based upon the average lot sizes within the proposed Subdivision, subparagraph (c) of Section 32-27 would provide the applicable specifications for streets and sidewalks, except (as conceded by the Developer at page 2 of its Reply Brief submitted to the Board of Appeals) this proposed Subdivision

³(...continued)

with the Current Code. (T.2 at 138). The Developer apparently notified PACE of its view that the 1957 Regulations govern the proposed Subdivision only days before the hearings before the Board of Appeals in November, 1996.

⁴ Petitioner's Exhibit 2 is the development plan approved by PACE on May 17, 1996. Petitioner's Exhibit 8 is a revised development plan which was submitted to PACE after it had approved the Subdivision. Significantly, the Critical Areas Commission was never provided with a copy of the revised development plan (Pct. Ex. 8), and therefore never reviewed or approved it.

falls within the classification of a "Group House Area"⁵ within Section 32-27 (d) - - which is excepted out of subparagraph (c).

Subparagraph (d) of Section 32-27 expressly addresses the street width and sidewalk specifications for a Group House subdivision. Subparagraph (d) states that sidewalks must be provided ". . . as required in paragraph (c) of this Section." Referring back to subparagraph (c) of Section 32-27, it states:

Sidewalks a minimum of four feet width to be of concrete, not less than four inches thick.

In sum, Sections 32-35 and 32-27(c) and (d), when read together, require the Developer to provide sidewalks four feet in width throughout the proposed Subdivision.⁶ There is no ambiguity here. Sidewalks are required for a Group House development.

With the exception of a limited sidewalk running along Woods Landing Drive, there are *no* paved sidewalks in the Proposed Subdivision. [See Prot. Ex. 2 and 8]. Sidewalks are necessary to provide safe travel for the residents throughout the community. It is inevitable that children who reside in the Subdivision will ride their bikes and skateboards within the neighborhood. The residents will go for walks or jog. In the absence of sidewalks, the only place for the children to ride their bikes and for the residents to walk is on the roads along with vehicular traffic. There are no street lights so pedestrians may not even be seen on the streets after dark.

⁵ See also the Board of Appeals' Decision at page 6. The Subdivision falls within the classification of a Group House area because it will consist of townhouses. *Id.*

⁶ One can imagine what paved sidewalks four feet (4') wide will do to the impervious surface of the Subdivision, which is discussed below.

Rather than sidewalks, the Proposed Subdivision calls for a network of pathways covered with mulch. (T.1 at 86-88). It is unrealistic to expect that either the children or the residents will choose to walk, bike or skate over the mulch, rather than pavement. In fact, the Anne Arundel County Department of Recreation and Parks initially recommended denial of this Subdivision solely because there are no sidewalks. Brian J. Woodward, Chief of Environmental Programs and Facilities for this Department, wrote to Lori Allen, the Project Manager at PACE, concerning the proposed Subdivision, as follows:

We continue to believe that since the recreation area is so far removed from the subdivision, that a sidewalk on both sides of the road are *necessary* in order to provide safe, useable access for the residents. (emphasis added).

(Prot. Ex. 11). While common sense and safe development and planning practices demand sidewalks, the 1957 Regulations require it.

B. The Width of Roads In the Subdivision Violates The 1957 Regulations

Section 32-27(d) of the 1957 Regulations provides that for Group House Areas, roads shall be "*thirty-four feet [in] width* plus curbs and sidewalks." (emphasis added). It is undisputed that the width of the so-called private lanes within the proposed Subdivision are twenty-six feet. The width of roads within the Subdivision is eight feet less than that which is required under the 1957 Regulations.⁷

The Developer will no doubt reiterate its semantic and artificial argument that there are no streets or roads within its Subdivision; there are merely "private lanes". The definition

⁷ As discussed below, if the Subdivision were made to comply with the 1957 Regulations, it would violate the Critical Area impervious surface limitation.

of a street in Section 32-1 of the 1957 Regulations, however, *does not require that it be publicly owned*. Streets are defined only as a right-of-way which provides primary access to abutting properties. (Exh. A at page 812). It cannot reasonably be disputed that the so-called private lanes and the adjoining curbs and mulched paths are right-of-ways for the residents which provide primary access to abutting properties within the proposed Subdivision, and therefore constitute streets under the 1957 Regulations.

It is also noteworthy that the Developer's plans are replete with references to its "private roads". (App. Ex. 31 A-D and 34). Indeed, the Developer's plans even explain the construction of each "*typical private road section*" in the Subdivision on page 2 of the development plans (Prot.. Ex. 2 and 8). Is a road analogous to a street or is this phraseology also intended to identify a parking court?

It defies common sense for the Developer to argue that the pavement within the Subdivision which is intended for travel by automobiles does not constitute a road or street for purposes of application of the 1957 Regulations. If this were the case, the County would be powerless to impose any restrictions on private roads within any subdivision being developed in Anne Arundel County. This is not the County's interpretation of the Code because it routinely requires proposed subdivisions, including this proposed Subdivision, to comply with road width, layout and materials specifications set forth under the Current Code and in the Design Manual. It must do so because the County is required to provide essential government services to subdivisions which contain private roads.⁸

⁸ One of Woods Landing's grounds for appeal is that it was inappropriate for the Board of Appeals to
(continued...)

of a street in Section 32-1 of the 1957 Regulations, however, *does not require that it be publicly owned*. Streets are defined only as a right-of-way which provides primary access to abutting properties. (Exh. A at page 812). It cannot reasonably be disputed that the so-called private lanes and the adjoining curbs and mulched paths are right-of-ways for the residents which provide primary access to abutting properties within the proposed Subdivision, and therefore constitute streets under the 1957 Regulations.

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government services to subdivisions which contain private roads.⁸

At page 2 of the Developer's Reply Brief, submitted to the Board of Appeals, it contends that there are no road requirements or sidewalk requirements applicable to Group House Areas because paragraph (d) of Section 32-27 is merely a sub-category under "Alternative 2" within Section 32-27. Although the Board of Appeals did not specifically address this issue, it necessarily must have agreed with the Developer to reach its Decision.

This position is untenable. Focusing on the substantive paragraphs within Section 32-27, it consists of substantive paragraphs (a) through (g), which obviously includes paragraph (d). Paragraphs (a) through (d) are broken down as follows:

Paragraph (a) pertains to road width and sidewalk requirements for subdivisions where the minimum lot size is 15,000 square feet;

Paragraph (b) pertains to road width and sidewalk requirements for subdivisions where the minimum lot size is 11,250 square feet;

Paragraph (c) pertains to road width and sidewalk requirements for subdivisions with a density greater than (a) and (b), except for those consisting of Group House Areas, General Apartment Areas and thoroughfares; and

Paragraph (d) pertains to road width and sidewalk requirements for subdivisions consisting of Group House and General Apartment Areas, which were excepted out of the general catch-all provision of subparagraph (c) because of the increased density of development involved with Group Houses and Apartments.

⁸ One of Woods Landing's grounds for appeal is that it was inappropriate for the Board of Appeals to grant approval of this subdivision pursuant to the 1957 Regulations without any analysis from the local reviewing authority. PACE has never evaluated the proposed Subdivision for compliance with the 1957 Regulations. For this reason, there is no evidence in the record that PACE ignored the road width and sidewalk requirements of the 1957 Regulations merely because the roads within the Proposed Subdivision are private. On the contrary, the only evidence in the record is that (mistakenly believing the Current Regulations apply) PACE required the Developer to comply with the road requirements and safety standards set forth in the Current Regulations (i.e., 26' width etc.) although its roads are private. (T.2 at 119-120).

It is clear that paragraph (d) pertaining to "Group House Areas" is a sub-category of "Alternative 2." Both Alternative 1 and Alternative 2 are listed under paragraph (c) as an optional method for the material base construction of roads which varies from the specific criteria for construction of roads that is set forth in paragraphs (a), (b) and (c). Moreover, there are no sub-paragraphs (a), (b) or (c) within Alternative 2. Furthermore, if paragraph (d) is a sub-heading under Alternative 2, then Section 32-27 is missing the substantive paragraph (d) in between paragraphs (c) and (e). In short, the Developer was desperate when it made this argument.

The Developer is then left only with its argument that Section 32-27 does not apply to the proposed Subdivision because there are no streets or roads in this Subdivision, there are merely "parking courts." This argument is dealt with above. Moreover, whether the Developer names the internal network of pavement for vehicular travel within the Subdivision as a "street," "road," "lane," "parking court," or something else, sidewalks are needed and required so that pedestrians are provided with a safe passage of travel. There is no sidewalks except in Section 32-27 for this unique situation where the Developer has elected to install parking courts with private lanes instead of streets.

C. Impervious Surface

Section 8-1808.3(b)(1), Impervious Surface Limitations, of the Natural Resources article, Maryland Code Annotated, states "... man-made impervious surfaces are limited to 15% of a parcel or lot." Compliance with this State law pertaining to impervious surface limitations is an issue which has been hotly contested by the parties for several years. In its

Decision, the Board of Appeals ruled that the Developer must comply with the Critical Areas laws. See the Decision at page 7.⁹

It is nothing short of incredible that the Developer continues to assert that it is not subject to the State's fifteen percent (15%) impervious surface statute. This very issue was considered by Judge Lawrence H. Rushworth of the Circuit Court of Anne Arundel County in Civil No. C93-2133-AA, an appeal from a Board of Appeals decision involving a prior final plan approval for this Subdivision. In that case, Judge Rushworth reversed the Board of Appeals prior approval and ruled as follows:

ORDERED, that any subsequent plan from The Developer Joint Venture for development be required to comply strictly with Maryland's critical area criteria and law; and further

ORDERED, that any subsequent plan from The Developer Joint Venture for development be required to comply strictly with Md. Code Ann., Nat. Res., Section 8-1803.3 (1990).

[County Ex. 1, p. 24].

The evidence is uncontroverted that the Developer will substantially exceed the fifteen percent (15%) impervious surface limitation if it is compelled to comply with the 1957 Regulations relating to four feet (4') paved sidewalks and paved streets thirty-four feet (34') in width. Indeed, during their cross-examination, one of the Developer's engineering expert, Edward Lowman, conceded that if sidewalks four feet in width are required in the Subdivision, it would exceed the fifteen percent (15%) impervious surface limitation. (T.2 at 189). See also Woods Landings' expert's testimony, T.2 at 89. Mr. Lowman also

⁹ The Developer did not file a cross-appeal. This issue is therefore fully and finally adjudicated.

conceded that if the width of the private roads within the Subdivision are required to be twenty-eight feet (28'), rather than as designed in the Developer's plans at a width of twenty-six feet (26'), the Subdivision will exceed the fifteen feet (15%) impervious surface limitation. Id.¹⁰ See also T.2 at 105.

The required width for paved sidewalks and streets in the 1957 Regulations and the impervious surface limitation pose an irreconcilable conflict for The Developer. It cannot simply amend its plans to include sidewalks four feet in width and thirty-four feet wide roads because to do so would cause the Subdivision to dramatically exceed the 15% impervious surface limitation. It will have to revise the entire Subdivision plan to reduce man-made impervious surface in other Areas (i.e., reduce the density of development) to allow for the required sidewalks and roads.

**D. The Revised Plan Was Not Received Or Reviewed By
The Critical Areas Commission As Required By
Statute**

The Board of Appeals' Decision approved the Developer's revised so-called final development plan (Prot. Ex. 8) which was submitted to PACE after its approval on May 17, 1996. Although a revised development plan may have been submitted to PACE, the Critical Areas Commission did not receive, and obviously did not evaluate, the revised development

¹⁰ Pursuant to the 1957 Regulations, road width for Group House Areas is required to be thirty four feet (34'). During the hearing, however, counsel for Woods Landing asked the Developer's experts what the impact to impervious surface would be if roads were twenty-eight feet (28') in width (rather than thirty-four feet (34') in width) because after a cursory review of Section 32-27 the undersigned counsel believed that subparagraph 32-27(e) applied to this Subdivision. Now that the Developer has correctly pointed out that the Subdivision constitutes a "Group House Areas", it is apparent that subparagraph 32-27(d), which requires streets thirty-four feet in width, applies.

plan. Regina Eslinger, the environmental planner from the Critical Areas Commission responsible for receiving and reviewing plans for compliance with the Critical Areas laws and regulations, testified that the Critical Areas Commission did not receive or review the final development plan (i.e., Prot. Ex. 8) which the Board of Appeals ruled is a valid and enforceable plan. (T.2 at 64-65 & Prot. Ex. 6).

Section 8-1811 of the Natural Resources Article, Md. Code Annotated, provides that "a project approval . . . may not be granted unless the project approval is consistent and complies with the Program." To that end, "the local agency authorized to grant project approval . . . shall send to the [Critical Areas] Commission . . . a copy of every pending or new application for approval" after which the Commission must "send written notice of receipt to the applicant and to the local approving authority." While the statute requires nothing more than this:

The local approving authority may not process an application. . . until the local approving authority has received notice of receipt from the Commission, and *any action of the local approving authority in violation of this paragraph shall be void.* (Emphasis added).

Id. The revised so-called final development plan, containing material changes, was not submitted to the Critical Areas Commission.¹¹ This violates the notice requirement of Section

¹¹ It can not be disputed that the revised plan (App. Ex. 8) contained changes material to the outcome because in its Decision the Board of Appeals expressly explained that it rejected the testimony of Woods Landing's expert surveyor concerning the Subdivision's violation of impervious surface limits because "[t]he different curbing [in the revised development plan] results in a six percent (6%) difference in impervious coverage, which could account for the variation in the impervious surface calculations found by the Protestant's surveyor. See the Decision at page 4. In sum, the Board of Appeals rejected expert testimony from Woods Landing's surveyor or that even ignoring the sidewalk and road width requirements of the 1957 Regulations, the Subdivision plans exceed impervious surface limits because the testimony of Woods Landing's expert failed to take into consideration the changes to curb size contained in the revised Development Plan.

8-1811(b). A development plan within the critical Areas which is approved at the county level but which violates statutory procedures for review by the Critical Areas Commission is void *ab initio*.

It is also important to note that contrary to the implication in the Board of Appeals' Decision at page 8, neither the Critical Areas Commission or PACE confirmed through independent calculations that the initial or revised development plan satisfy the 15% impervious surface limitation. (T.2 at 67-69 and 153-155). These agencies simply relied upon the certification of the Developer's engineer. Until Woods Landing's expert, William Craig, analyzed the Subdivision plan, no one had ever tested the Developer's assertion that it satisfies the fifteen percent (15%) impervious surface limitation. Significantly, at the same time the Developer claimed it satisfied impervious surface limits, the Developer also claims that it does not need to comply with this state statute.

In summary, taking into consideration the sidewalk width of four feet and the road width of thirty-four feet required under the 1957 Regulations, all three expert witnesses agree that this Subdivision would exceed the fifteen percent (15%) impervious surface limitation. Even if the Developer could ignore the sidewalk and street width requirements of the 1957 Regulations, the Subdivision plan reviewed by the Critical Areas Commission and relied upon by PACE to grant final plan and subdivision approval on May 17, 1996 exceeds the 15% impervious surface limitation. The revised Subdivision plan is void because it was not sent to the Critical Areas Commission for review.

G. The Subdivision Name

The 1957 Regulations (and the Current Regulations) prohibit use of the same name for a different subdivision. See Section 32-41(b) of the 1957 Regulations, Exhibit A.

Although it is conceded that at the time Woods Landing was originally developed and platted, it was referred to as "Section 1," and that it was then contemplated that there would be a Section 2, this concept was changed based upon a Declaration of Easement executed between Woods Landing and the Developer in 1983 and recorded in the land records of Anne Arundel County at Book 4163, page 417. (Prot. Ex. 1). It is clear from pages 417 through 419 of the Declaration of Easement that the undeveloped property retained by the Developer (i.e., the parcel proposed for the Subdivision) would not be developed in common with the land owned by Woods Landing, in return for Woods Landing's concession that certain recreational amenities within Woods Landing would be shared with the new subdivision to be developed by The Developer.¹² In short, the Board of Appeals finding that these are not separate subdivisions, but merely two separate sections of the same subdivision is diametrically opposed to the evidence. In fact, the Board of Appeals fails to even mention, much less reconcile, the Declaration of Easement in its Decision.

There are also meaningful reasons why Woods Landing is opposed to the use of its name for this proposed Subdivision. This Subdivision will be very different from Woods Landing. It will not be subject to the same covenants, conditions, restrictions, assessments,

¹² Consistent with this notion, the Declaration of Easement did not refer to the owners of the property proposed for the current Subdivision as Woods Landing Section Two or any other name which is identical to or confusingly similar to Woods Landing.

architectural control, rules or regulations. It does not intend to maintain the same architectural style or building exterior materials. The size of the units will be different than the size of the units in Woods Landing. The price of the units in this Subdivision will be different, and undoubtedly lower, than the value of the units in Woods Landing.

In summary, use of Woods Landing's name for this Subdivision will be deceptive to consumers and will unfairly dilute the value of the Woods Landing name.

III Conclusion

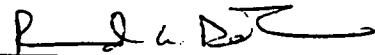
This proposed Subdivision does not satisfy the requirements of the 1957 Regulations which calls for four feet (4') paved sidewalks and thirty-four feet (34') paved roads. If the Subdivision provided for the necessary sidewalks and road width, which must be imputed into the plans because they are required, the Subdivision grossly violates the impervious surface limitation of the State critical area law. It is abundantly clear that under these circumstances, the Board of Appeal's approval of this Subdivision must be reversed. Furthermore, it is illegal for this Subdivision to use the Woods Landing name.

It should also be noted that Woods Landing does not contend, and is not arguing, for no development. There is no doubt that the Developer is legally entitled to build on its property, subject to compliance with local regulations and critical areas law. Woods Landing does, however, contend that the Developer should be required to reduce the density of its Subdivision to comply with the law.

For the foregoing reasons, Woods Landing respectfully requests the Court to reverse the Opinion of the Board of Appeals sustaining PACE's ruling which granted final site plan

and subdivision approval for the Subdivision, and require that any subsequent plan from the Developer for development on the property currently designated for the Subdivision be required to comply strictly with the sidewalk and road width requirements of the 1957 Regulations and with Maryland's Critical Area Criteria and law.

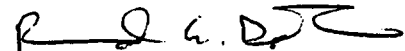
Respectfully submitted,



Richard A. DeTar
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
(410) 822-5280

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 20th day of June, 1997, a true and correct copy of the Memorandum In Support of Appeal was mailed, U.S. First Class mail, postage prepaid to Harry C. Blumenthal, Esquire, Blumenthal & Delavan, 170 Jennifer Road, Suite 240, Annapolis, Maryland 21401 and to Robert M. Pollock, Esquire, 2262 Riva Road, Annapolis, Maryland 21401.



Richard A. DeTar

AA136-91
COPY

IN THE CIRCUIT COURT OF MARYLAND
FOR ANNE ARUNDEL COUNTY

WOODS LANDING COMMUNITY *
SERVICE ASSOCIATION, et al. *

Appellants, *

v. *

Case No. C-97-36904.AA

ANNE ARUNDEL COUNTY *
BOARD OF APPEALS *

Appellee. *

* * * * *

REPLY TO MEMORANDUM IN OPPOSITION TO APPEAL

Appellants, Woods Landing Community Service Association, Inc., Howard and Pamela Hale and Albert and Betsy Kulle (collectively "Woods Landing"), by their attorneys, Richard A. DeTar and Miles & Stockbridge, P.C., hereby submit this Reply to the Memorandum in Opposition to Appeal.

The majority of the Developer's Opposition simply raises arguments in response to those set forth in Woods Landing's Memorandum. Woods Landing does not re-argue these issues in its Reply, believing that the refinement of issues already raised is better left for oral argument.

The Developer does, however, raise a new issue which was not argued before the Board of Appeals and was not addressed in Woods Landing's Memorandum. This is the issue of Woods Landing's standing to appeal. Woods Landing first points out that because this issue has never been raised before, the Developer has waived it.

More to the substance of the issue, the Court need look no further than the lead case cited by the Developer on the issue of standing. In Sugarloaf Citizens' Assn. v. Dept. of Environment, 344 Md. 271, 686 A.2d 605, 618-619 (1996), the Court of Appeals reiterated the long standing rule of law in Maryland that "[i]n actions for judicial review of administrative land use decisions, an adjoining, confronting or nearby property owner is deemed, *prime facie*, a person aggrieved." In Sugarloaf, the Court of Appeals cites eight (8) different cases spanning almost 40 years which reiterate this long established rule of law that adjoining property owners have standing to participate in a judicial review of an administrative land use decision. It is, to say the least, surprising that the Developer fails to bring this fundamental rule of law to the attention of the Court.

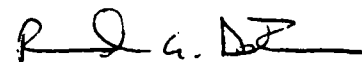
In the instant case, Woods Landing adjoins the proposed site for development. In fact, the Developer claims that it is all one and the same subdivision. The Hales and the Kulles are property owners within Woods Landing.

While Woods Landing need go no further than explaining their proximity to the development, it is also noteworthy that Woods Landing's counsel argued to the Board of Appeals that the inadequate streets would make it difficult for emergency vehicles, such as fire trucks, to turn around. This will substantially impact residents of Woods Landing when a fire truck inadvertently drives into the Developer's subdivision, and has to turn around to get to a house in Woods Landing that is on fire. The inadequate street width or so-called private lanes will also present parking problems (i.e., minimal parking spaces and no room for curb side parking) which will result in over-flow parking within Woods Landing. The

inadequate street width and absence of sidewalks all contribute to the poor quality of the neighborhood within the proposed development next to Woods Landing, which will negatively affect property values for the residents of Woods Landing.

In sum, the law recognizes that adjoining and nearby property owners have standing to contest administrative land use decisions because there are always indirect impacts a development has on nearby property owners.

Respectfully submitted,



Richard A. DeTar
Miles & Stockbridge, P.C.
101 Bay Street
Easton, Maryland 21601
(410) 822-5280

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 30th day of July, 1997, a true and correct copy of the Memorandum In Support of Appeal was mailed, U.S. First Class mail, postage prepaid to Harry C. Blumenthal, Esquire, Blumenthal & Delavan, 170 Jennifer Road, Suite 240, Annapolis, Maryland 21401 and to Robert M. Pollock, Esquire, 2262 Riva Road, Annapolis, Maryland 21401.



Richard A. DeTar

AA152-91

ANNE ARUNDEL COUNTY

Annapolis, Maryland


Department of Planning and Code Enforcement

Development Division

INTER-OFFICE CORRESPONDENCE

July 25, 1997

TO: Lori Allen

FROM: Penny Chalkley 

SUBJECT: WATERS EDGE at WOODS LANDING
Revised Final P1997-165

1. I have no objection to the change in name.
2. The amended easement was recorded in Liber 7938, Folio 129. Areas originally recorded in the first conservation easement were retained and the additional square footage between Units 83 and 84 along Pintail was added.

The additional easement area is shown on the revised FDP and the plat.

3. Since the reforestation obligation will be satisfied using an easement on off-site existing forest, Note #5 should be modified under Critical Area.
4. The note under Recreation Requirements regarding clearing was added after I reviewed the previous Final plan submittal. It was not factored in previously since no clearing was shown for recreation. If all their clearing as shown on the FDP minus recreation is the 28.6% indicated, then they are OK. However, the table should be clear as to where that potential clearing falls:

28.6% or 8.43 acres as shown on FDP

With rec area of .42 acres = 8.85 or 30%

Then no one can think there is additional clearing permitted by arguing that the 18,482 sq.ft. was part of the 367,024 sq.ft. since it was not broken down.

5. Keep in mind that there can be no clearing of woody vegetation - trees, understory trees or shrubs - for the Tot Lot unless it is part of the 18,482.

PC:lc

cc: CBCAC

RECEIVED

AUG 5 1997

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-2501

October 14, 1993

MEMORANDUM

TO: John C. North, II, Chairman
FROM: George E. H. Gay
Assistant Attorney General
RE: Woods Landing, et al. v. Board

Oral argument in this case is set for 10/25/93 at 9:30 am in the Anne Arundel County Circuit Court. (See attached copy of notice). In my opinion, your attendance as an observer could have a positive effect on the Court's consideration of our position. You may recall that Judge Rushworth heard our injunction petition in the Back Bay case. Of course, your presence is not required.

Please provide a copy of this memo to Sarah, Ren, Liz, Claudia and Regina.

GEHG:gg

THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

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OCT 19 1993

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

FAX (410) 974-5206

Office of DIRECTOR OF ASSIGNMENT
Circuit Court For Anne Arundel County
Post Office Box 2395
Court House, Church Circle
Annapolis, Maryland 21404-2395
(410) 222-1422/1423, TTY for Deaf: (800) 492-5042
Washington: 970-2250 x-1422

NOTICE OF HEARING / TRIAL Case number: C-93-02133.AA
Old Case number:

CIVIL

WOODS LANDING COMMUNITY ASSOCIATION, INC., et al. vs. BOARD OF APPEALS OF ANNE A
, et al. APPELLANT/APPELLEE

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

RECEIVED

To: GEORGE E.H. GAY
580 TAYLOR AVENUE
ANNAPOLIS MD 21401

OCT 14 1993

DNR-LEGAL DIVISION

You are hereby NOTIFIED TO APPEAR before the Judges of the:

CIRCUIT COURT
Anne Arundel County
Church Circle
Annapolis, MD 21404-0000

Court date:
25th day of OCTOBER, 1993
At: 09:30AM
Court Trial

PLEASE NOTE: All counsel are expected to confer with each other with regard to the assigned trial date and to advise the court and other parties of any pre-existing conflict promptly.

Application for postponement must be made in writing with copies to all attorneys.

Please report Jury cases settled prior to 4:00 pm of day before trial to Assignment Clerk.

Please refer to Assignment Bulletin Board for Court Room Designation.

If pre-trial conference is required, please address a formal request to this office.

Very truly yours,

Barbara M. Hantske

Barbara M. Hantske
Director of Assignment

Date Issued: 10/05/93

Please notify the Court, as far in advance as possible, of any reasonable accommodation that is needed because of a disability.

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974- 2501

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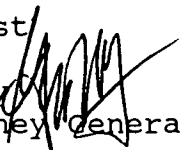
JUN 1 1993

May 27, 1993

**CHESAPEAKE BAY
CRITICAL AREA COMMISSION**

MEMORANDUM

TO: Distribution List

FROM: George E. H. Gay 
Assistant Attorney General

RE: Stay/Woods Landing II

Enclosed for your information please find a copy of Harry C. Blumenthal's 5/25/93 letter to me regarding the above referenced matter. If you have questions concerning it, please call me.

cc/w/encl.: Distribution List --
John C. North, II
Sarah J. Taylor, Ph.D.
Ren Serey
Reginia Esslinger
John Murray, Esq.

THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
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EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

AA156-91



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AUG 2 1995
CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Parris N. Glendening
Governor

Maryland Department of Natural Resources

Wildlife Division
P.O. Box 68
Wye Mills, Maryland 21679
July 28, 1995

John R. Griffin
Secretary

Ronald N. Young
Deputy Secretary

Milt McCarthy
McCarthy & Associates
14458 Old Mill Road, Suite 201
Upper Marlboro, MD 20772

RE: FIDS Conservation; Woods Landing II (AA Co., tax map 40, parcel 163)

Dear Mr. McCarthy:

Bird surveys conducted by two independent observers (David W. Holmes, John Canoles) during 1995 indicate that Forest Interior Dwelling Bird (FIDS) habitat, as defined in Critical Area Guidance Paper No. 1, does not occur on the above property. These more recent findings supersede those of Sue A. Ricciardi during 1994.

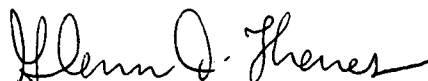
Consequently, no FIDS conservation measures are necessary on the property. However, to help maintain habitat for other forest wildlife, including migratory stopover habitat for FIDS, please consider the following:

- (1) Minimize forest clearing to the footprint of the homes and to that which is absolutely necessary for access roads and parking lots.
- (2) Retain as a large a contiguous block of forest as possible, particularly along the northwest section of the parcel and along the Little Magothy River.
- (3) Avoid construction during May-August, the breeding season for most forest nesting birds.
- (4) Retain or create wildlife corridors that maintain connectivity between the remaining forest and habitats on adjacent properties. For example, maintain forest corridors that connect with forest habitat along the southwest and east boundaries of the property.

Woods Landing II letter
July 28, 1995
page 2

Thank you for considering these recommendations. For additional assistance, please feel free to contact me or James M. McCann.

Sincerely,

A handwritten signature in cursive script, reading "Glenn D. Therres".

Glenn D. Therres, Supervisor
Wildlife Diversity Program

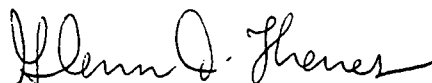
WOODSLDG.LTR

cc: Richard A. DeTar
Ren Serey
Claudia Jones
James M. McCann

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J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

(410) 974-
February 18, 1994

MEMORANDUM

TO: John C. North, II, Chairman
Chesapeake Bay Critical Area Commission

FROM: George E. H. Gay *[Signature]*
Assistant Attorney General

RE: Woods Landing II Appeal

Enclosed please find a copy of Judge Rushworth's 2/10/94 Memorandum of Opinion and Order. You will note that Judge Rushworth embraced the Commission's position in virtually every instance. Particularly, he recognized that the Commission's June 2, 1994 Resolution and County response thereto were determinative.

As soon as possible, I will let you know whether or not the property owner notes an appeal from this decision.

Enclosure (as stated)

GEHG:gg

cc: M. Mason, Esq.
D. Evans, Commissioner, w/encl.
J. Gutman, Commissioner, w/encl.

a: WoodsOp.mem
CAC-2-93

RECEIVED

FEB 18 1994

CHESAPEAKE BAY
COMMISSION

*Regina
Did you
see this?*

THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

*Pls
return*

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SHAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

RECEIVED

In Re:	*	IN THE
Appeal from a Decision of the	*	
County Board of Appeals in Case No.	*	CIRCUIT COURT
BA-10-92A, upholding a decision	*	
of the Planning and Zoning Officer	*	FOR
Woods Landing Community Association	*	
Inc., <u>et. at.</u> ,	*	ANNE ARUNDEL COUNTY
Appellants	*	
v.	*	CASE NO. C-93-2133.AA
Woods Landing No. 2 Joint Venture	*	
Appellee	*	

MEMORANDUM OF OPINION AND ORDER

This matter comes before the Court on appeal from the decision of Anne Arundel County Board of Appeals rendered February 19, 1993, which upheld the action of the County's Planning and Zoning Officer in signing final subdivision plats for section two of the Woods Landing subdivision.

STATEMENT OF FACTS

Woods Landing II Joint Venture ("Woods Landing II") owns a 31 acre parcel of real property on the Broadneck Peninsula in Anne Arundel County. The property is adjacent to the tidal headwaters of the Little Magothy River. Almost all of it is located within Anne Arundel County's Chesapeake Bay Critical Area.

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Woods Landing, section two, is a platted subdivision of 153 large townhouse lots that are proposed to be situated on the 31 acre parcel. Access to the planned subdivision will be gained through section one of Woods Landing, which is an existing townhouse community that is accessed via Bay Head Road on the north side of U.S. Route 50. The Woods Landing property is zoned R5-Residential, and is the subject of an approved zoning special exception for townhouse development.

On October 26, 1983, the original subdivision plan for the property was filed with Anne Arundel County. On August 6, 1984, the County preliminarily approved it. On April 19, 1985, the subdivision was included by the County on a list of subdivisions which were awaiting sewer allocation, and it remained on that list until December 1989, when the County began to process it again. On April 18, 1991, Woods Landing II transmitted its final subdivision plan to the County for review.

On or about December 31, 1991, the County's Office of Planning and Zoning granted final site plan and subdivision approval for 142 residential units on the large area of property and 12 units on the small area. This decision was appealed by Woods Landing Community Association, Inc., Steven and Bonnie Treat, and Albert and Betsy Kulle on January 27, 1992. The appeal was considered de novo by the Anne Arundel County Board of Appeals, which conducted a public hearing on the appeal on April 15, May 4, July 13 and August 18, 1992. Through a written opinion dated February 19, 1993, the Board of Appeals

denied the appeal. On or about March 12, 1993, the Appellants appealed to this Court for a review of the Board's decision. On April 5, 1993, John C. North, II, Chairman of the Chesapeake Bay Critical Area Commission ("the Commission"), filed a Motion to Intervene which was granted on April 26, 1993.

APPLICABLE LAW

In the early part of the 1980's, the Chesapeake Bay was in rapid decline. In an attempt to "Save the Bay," the General Assembly enacted the Chesapeake Bay Critical Area Protection Program, Md. Code Ann., Nat. Res. § 8-1801 et seq. The purposes of the Program are set forth in § 8-1801(b):

- (1) To establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and
- (2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.

To establish the cooperative local/state relationship to address the many environmental problems it identified and to implement the wide ranging Resource Protection Program it set up, the General Assembly created a new State agency, the Chesapeake Bay Critical Area Commission ("Commission") and specifically assigned responsibilities to it and to local governments. Md. Code Ann., Nat. Res. § 8-1807.

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Local jurisdictions were assigned "primary responsibility for developing and implementing a program, subject to review and approval by the Commission." Md. Code Ann., Nat. Res. § 8-1808(a). To set forth a guideline for local program development, the General Assembly enacted § 8-1809(a), which gave each local jurisdiction the option:

- (1) To develop a critical area protection program to control the use and development of that part of the Chesapeake Bay Critical Area located within its territorial limits; or
- (2) Not to develop such a program.

Anne Arundel County, like most local jurisdictions, elected to develop a program.

Anne Arundel County's local critical area program was adopted by the Anne Arundel County Council effective August 22, 1988 via County Council Bill 49-88. As required by § 8-1809, the Chesapeake Bay Critical Area Commission approved the County's local Critical Area Program before it became effective.

The local program includes specific changes to Articles 3, 21, 24, 26, and 28 of the Anne Arundel County Code, a number of uncodified changes to the County Code and a program document, appendices and land use classification maps all of which are incorporated into the County Code. The County Program provides a detailed list of Critical Area application requirements and Critical Area environmental controls which apply to subdivision review in the County. The County Program provides in part:

All plans for subdivisions in the Critical Area shall conform to the criteria for the specific critical area land use category and shall be undertaken only in accordance with the [Critical Area environmental controls.].

However, in the uncodified portion of the County Program is a section which, if applicable, alleviates a development's required compliance with the exhaustive list of program provisions.

Specifically, that section provides as follows:

- (3) Proposed subdivisions that were placed by the County on the waiting list for a water or wastewater allocation that have complied with the provisions of Bills No. 42-86 or 90-86 are exempt from this Ordinance.

The County Office of Planning and Zoning relied upon this exemption provision to approve the Woods Landing II Project. The Board of Appeals, through its written opinion, expressed its belief that it was compelled to do likewise, despite its inclinations to the contrary:

Unfortunately, the Board concludes that its hands are tied by the exemption provisions of County Council Bill No. 49-88. The Board may not agree that proposed subdivisions should have been completely exempted from the Critical Areas Program simply because they were on the sewer allocation waiting list, but the Board's views in this regard are of no consequence. The fact is that the County Council adopted an ordinance that provided for such an exemption. Subsequently, the State Critical Areas Commission approved the County's program, including the exemption provisions.

RE: An Appeal from an Administrative Decision of the Office of Planning and Zoning, No. BA-10-92A, slip op. at 6 (Anne Arundel County Bd. of App. February 19, 1993) (hereinafter "Board Opinion").

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Appellants, in bringing this current appeal, suggest that this Court's hands are not tied, while Appellee offers that Woods Landing II falls directly into the exemption provision found in the County's local program. This appearing to be a case of first impression in Maryland, the Court is now in a position to address and resolve the substantive issues raised by the parties in this matter.

STANDARD OF REVIEW

The standard of review to be applied on appeal from an administrative agency decision depends upon the nature of the agency finding being reviewed. The Court of Special Appeals has set out the analysis by which a reviewing court should determine the appropriate standard:

1. First, the reviewing court must determine whether the agency recognized and applied the correct principles of law governing the case. The reviewing court is not constrained to affirm the agency where its order "is premised solely upon an erroneous conclusion of law." [Ramsey, Scarlett] [302 Md. at] 834, 490 A.2d 1296.
2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, the reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence, i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Id. At this juncture, the Ramsey, Scarlett court reminds us that "[I]t is the agency's province to resolve conflicting evidence, and, where inconsistent inferences can be drawn from the same evidence, it is for the agency to draw the inferences. Id. at 835, 490 A.2d 1296.

3. Finally the reviewing Court must examine how the agency applied the law to the facts. This of course is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is "Whether, ... a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]." Id. at 838, 490 A.2d 1296.

Gray v. Anne Arundel County, 73 Md. App. 301, 309, 533 A.2d 1325, 1329. The resolution of a factual question by a zoning authority will not be overturned by a reviewing court unless the zoning authority acts arbitrarily, capriciously, unreasonably, or illegally. Montgomery County v. National Capital Realty Corp., 267 Md. 364, 297 A.2d 675 (1972).

However, when the issue raised on appeal is one of law, not fact, the standard of review differs. In such an instance, the Court's scope of review is whether the action or ruling of the zoning authority was legally correct:

Where the issue before the appellate court is one of law, the Court's review is expansive, that is, the appellate court may substitute its judgment for that of the [administrative agency].

Gray v. Anne Arundel County, 73 Md. App. at 309, 533 A.2d at 1329, quoting Thames Point Associates v. Supervisor, 68 Md. App 1, 10, 509 A.2d 1207, 1211 (1986). A reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law. People's Counsel v. Maryland Marine, 316 Md. 491, 497, 560 A.2d 32, 34-35 (1989). However, although a court may reach its own conclusion on a question of pure law, the decision of the Board "must be

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upheld on judicial review if it is not based on an error of law, and if the [Board's] conclusions reasonably may be based upon the facts proven." People's Counsel for Baltimore v. Maryland Marine Mfg. Co., 316 Md. 491, 496-97, 560 A.2d 32, 34 (1989) (citing Ad + Soil, Inc. v. County Comm'rs of Queen Anne's County, 307 Md. 307, 338-39, 513 A.2d 893, 909 (1986)).

ISSUES PRESENTED

This Court, having heard argument on both sides of this issue, having read and considered the lengthy memoranda submitted in support of the respective positions, and having considered all relevant common and statutory law, finds that the following issues are ripe for judicial determination:

- I. Was Section 2 of Woods Landing exempt from the County's Critical Area Requirements by operation of Section 3 of County Bill No. 49-88 at the time the Board of Appeals rendered its decision?
- II. If the Board of Appeals correctly determined that Woods Landing II's application for final subdivision approval was exempt from the County's Critical Area program at the time it rendered its decision, do subsequent actions by the Critical Area Commission compel this Court to reverse the Board?
- III. Must Woods Landing II's Development Plan comply with the maximum impervious surfaces requirement of Md. Code Ann., Nat. Res., § 8-1808.3 (1990)?

Each of these issues will be discussed, analyzed, and resolved below.

ANALYSIS

I. WAS SECTION 2 OF WOODS LANDING EXEMPT FROM THE COUNTY'S CRITICAL AREA REQUIREMENTS BY OPERATION OF SECTION 3 OF COUNTY BILL NO. 49-88 AT THE TIME THE BOARD OF APPEALS RENDERED ITS DECISION?

In arguing for a reversal of the decision of the Board of Appeals, Appellant Woods Landing Community Association, Inc., offers, among other things, that the Section 3 exemption provision relied upon by the Planning and Zoning officer and then the Board of Appeals to approve Woods Landing II is inconsistent with state law and therefore invalid. Further, the Association asserts that when such an inconsistency exists, any conflict between state and local law must be resolved in favor of the more restrictive state law, and cites § 1-116 of the Anne Arundel County Subdivision Ordinance in support of that position.¹

In response, Woods Landing No. 2 Joint Venture points to the uncontroverted evidence presented at the hearing before the Board of Appeals and how it was then and should now be applied to the "plain language" of § 3 of Bill No. 49-88. In so doing, Appellee points out to the Court that even the witness representing the Critical Area Commission staff testified that the County's local

¹ Anne Arundel County Subdivision Ordinance, Conflict With Other Law, provides:

Whenever a provision of this article and any other provision of law impose overlapping or contradictory requirements or contain restrictions covering the same subject matter, the provision that is more restrictive or imposes higher standards or requirements shall govern.

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program, as it existed then, exempted the subdivision from compliance.

Having considered these arguments, this Court finds that Woods Landing No. 2 Joint Venture was exempt from the County's Critical Area requirements by operation of Section 3 of County Bill No. 49-88 at the time the Board of Appeals rendered its decision. As the Board stated in its Opinion, the testimony from the witnesses from the Office of Planning and Zoning established that the Woods Landing No. 2 Joint Venture complied with all appropriate requirements in order for the exemption under Bill 49-88 to be granted. Such testimony was un rebutted, and the plain language of that law as it was applied to the facts provided for the exemption. Accordingly, the Court, on this issue, finds that the Board of Appeals was correct in its application of the law as it existed at the time.

II. IN LIGHT OF THE FACT THAT THE BOARD OF APPEALS CORRECTLY DETERMINED THAT WOODS LANDING II'S APPLICATION FOR FINAL SUBDIVISION APPROVAL WAS EXEMPT FROM THE COUNTY'S CRITICAL AREA PROGRAM AT THE TIME IT RENDERED ITS DECISION, DO SUBSEQUENT LEGAL ACTIONS BY THE CRITICAL AREA COMMISSION COMPEL THIS COURT TO REVERSE THE BOARD?

As stated previously, the Board of Appeals upheld Woods Landing II's final subdivision approval based upon its exempt status from the County's Critical Area Program on February 8, 1993. Subsequently, and perhaps in response thereto, the Chesapeake Bay Critical Area Commission attempted to take remedial steps to change what it considered to be flaws in the

County's program that conflicted with its own criteria and law. Accordingly, this Court must determine what, if any, legal effect the Critical Area Commission's June 2, 1993 resolution had on Woods Landing II's final approval plan.

Md. Code Ann., Nat. Res. § 8-1809 (1989), Approval and Adoption of Program, addresses the procedural structure for approval and adoption of all local jurisdiction critical area programs by the Critical Area Commission. Section 8-1809(1), Correction of clear mistakes, omissions, or conflicts with criteria or laws, provides as follows:

- (1) If the Commission determines that an adopted program contains a clear mistake, omission, or conflict with the criteria or law, the Commission may:
 - (i) Notify the local jurisdiction of the specific deficiency; and
 - (ii) Request that the jurisdiction submit a proposed program amendment or program refinement to correct the deficiency.
- (2) Within 90 days after being notified of any deficiency under paragraph (1) of this subsection, the local jurisdiction shall submit to the Commission, as program amendments or program refinements, any proposed changes that are necessary to correct those deficiencies.
- (3) Local project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void after notice of the deficiency.

On June 2, 1993, the Commission voted on and passed a Resolution declaring the exemption provisions of Anne Arundel County's Critical Area Program to be inconsistent with the Criteria. In particular, the Commission resolved that:

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The provisions of the Anne Arundel County Code Article 28, Title 15, Section 3, Paragraph (4) which provide 'The proposed subdivisions that were place by the County on the waiting list for a water or wastewater allocation that had complied with the provisions of Bills No. 42-86 or 90-86 are exempt from this Ordinance' are not consistent with COMAR 27.01 and the Critical Area Law...

There is no dispute that the part of the local program which the Commission determined to be deficient includes the exemption provision which the Planning and Zoning Officer and the Board of Appeals relied upon to grant final project approval to the Applicant's plans for Woods Landing II. On June 9, 1993, pursuant to § 8-1809(1)(1), the County was formally notified of the Commission Resolution and instructed to submit proposed changes to remedy the alleged inconsistency between the local program and the Criteria.

In response to the Commission's Resolution, the Anne Arundel County Council, after consideration of the issue, passed Bill No. 61-93 on August 12, 1993, which amended the County's local critical area program. Interestingly enough, however, the Council once again included the same exemption that has come under attack. On November 3, 1994, shortly after oral argument was heard in this case, the County's new local program was approved by the Critical Areas Commission, after the exemption provision was again found to be in conflict and deleted.

Both the Chesapeake Bay Critical Areas Commission and Woods Landing Community Association, Inc., argue that the legislative action of the Commission require this Court to review the Woods Landing II Project under the County Program without consideration

of the "null and void" Section 3 exemption, even if, as the Court has already held, the Board correctly applied the County Program as of February 19, 1993. In so doing, it is furthered, the Court will find that the Project does not satisfy a large number of the County Program requirements.²

In response, Woods Landing II Joint Venture offers four arguments to the contrary:

- A. Assuming, arguendo, that the Commission's June 2, 1993 resolution is either legislative or quasi-legislative, and that it operates to change the law, then adoption of the resolution violates the State Administrative Procedure Act.
- B. The Commission's adoption of the June 2nd resolution is not a legislative act, nor a quasi-legislative act, but rather is merely another fact or circumstance that could have been considered by the Board, as well as by this Court, if the fact had been in the Board's record.
- C. Because the fact of the Commission's adoption of the June 2nd resolution was not in the Board's record, neither the Board, nor this Court, may consider it.
- D. Even if the Commission's adoption of the June 2nd resolution changed the law, either as a legislative, quasi-legislative, or some other kind of act, the court may not apply the "new law" in the absence of a clear expression of intent that the "new law" is to operate retrospectively.

In light of the above arguments, and the applicable responses thereto, this Court will determine the effect of the Commission's June 2nd below.

² See Memorandum of Intervenor/Appellant, filed June 28, 1993, pp. 16-18.

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² See Memorandum of Intervenor/Appellant, filed June 28, 1993, pp. 16-18.

A. Administrative Procedures Act

In arguing that the Commission Resolution violated the Administrative Procedures Act, Appellee points out that the Chairman of the Chesapeake Bay Critical Area Commission, in his Memorandum of Intervenor/Appellant, characterizes the Commission's action under § 8-1809(1) as "legislative," and argues that it "changes" the law that the court must apply in this case. Following that line of reasoning, Woods Landing II Joint Venture asserts that if § 8-1809(1) does operate to delegate to the Commission quasi-legislative powers, thus enabling it to change the law, then any action the Commission takes pursuant to that section must follow the procedures set forth in Subtitle 1 of the Administrative Procedures Act. See Md. Code Ann., State Gov't § 10-102 (1993). Among those procedures that must be followed are: (1) preliminary review by the Joint Committee on Administrative, Executive, and Legislative Review; (2) publication in the Maryland Register; (3) public comment; and (4) notice of adoption. Id., §§ 10-110 through 10-117. Joint Venture II points out that the Commission neither attempted nor completed any of the mandatory procedural requirements of the Administrative Procedure Act when it adopted its June 2nd resolution.

Though enlightening, this Court finds that Appellee's argument concerning the Commission's compliance, or lack thereof, with the Administrative Procedures Act is misplaced. Woods Landing II Joint Venture raises the issue of the APA because it

believes that the Commission, through its quasi-legislative powers, has the authority to change the law. That construct is not true; the Commission can not and does not change the law, what it can and did do is compel a local jurisdiction to adopt State law when it notices a conflict or inconsistency between a local program and the State Criteria. Stated another way, the Commission's Resolution did not change the State's Critical Area Criteria, it enforced that criteria by eliminating those aspects of Anne Arundel County's local program that failed to comply with the Commission's Program. Therefore, this Court finds that compliance with the procedural requirements of the Administrative Procedures Act was not necessary.

B. Commission's Action Was Neither Legislative Nor Quasi-Legislative, But Was Merely a Fact That Should Have Been Considered By the Board, and This Court, Had That Fact Been in the Board's Record.

Appellee argues that adoption by the Commission of its June 2nd resolution affecting portions of Anne Arundel County's local program did not change the law that this Court must apply in this case. Specifically, Woods Landing II asserts that a local jurisdiction has 90 days in which to respond to the Commission's §8-1809(1) action with an appropriate program refinement or amendment. If the local response is a program amendment, the Commission has 90 days after acceptance to act on the amendment. Md. Code Ann., Nat. Res. § 8-1809(o)(1). If the Commission approves the amendment, the local jurisdiction then has 120 days to incorporate the amendment into its local program. Id., § 8-

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1809(o)(2). Woods Landing II suggests that then, and only then, is the law changed.

With its position Appellee overlooks the clear language of § 8-1809(1)(3). Again, it states unequivocally that "[l]ocal project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void after notice of the deficiency." While Woods Landing II is correct about the time requirements that must be honored with respect to program amendments and refinements, there is no authority to suggest that any local project approval granted under a deficient part of a local program receives a similar stay of execution. The clear language mandates that the project approval is "null and void after notice of the deficiency," not somewhere within the following 300 days.³ Approvals granted under such deficiencies are not merely suspended pending amendments or refinements, they seek to exist as of the time of notice. Once the Commission notifies the County of a deficient regulation by way of resolution, the General Assembly has declared that regulation to be null and void.

³ If Appellee's position were correct, it theoretically could take up to 300 days for the project approval to become null and void:

- 90 days to refine or amend
- + 90 days to act on the amendment
- + 120 days to incorporate the amendment

300 days before the project approval became null and void

C. Because the Fact of the Commission's Adoption of the June 2nd Resolution Was Not in the Board's Record, Neither the Board, Nor This Court, May Consider It.

Appellee argues that because the Commission's June 2nd resolution is not a change in the law, from either a legislative or judicial source, the resolution, as well as the Commission's action in adopting it, is merely a fact or circumstance that is not in the Board's record. Therefore, the resolution cannot be considered by the Court in its review of the Board's decision.

To a large extent Woods Landing II is correct. The Court of Appeals has delineated the role and function of a court in reviewing a decision made by an administrative agency such as the Board of Appeals:

[I]n reviewing zoning or rezoning by the Board, acting in its legislative capacity, the function of the Court is a narrow one. [Citations Omitted]. Unless the action was arbitrary, capricious, unreasonable, discriminatory or beyond statutory or constitutional limitations, the courts cannot set it aside. And, to make such determination we must review the action of Board in the light of the facts presented and conditions as they existed as of the date of the Board's action.

Bishop v. Board of County Comm'rs of Prince George's County, 230 Md. 494, 501, 187 A.2d 851, 854-55 (1963). In light of the facts presented and conditions as they existed on February 18, 1993, this Court has already determined that the Board of Appeals was correct in its application of the law, specifically the exemption provision of the Anne Arundel County's Local Program, as it existed at that time. See Part I of this Opinion.

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However the analysis does not and can not end there. The problem for Woods Landing II Joint Venture is that subsequent to the Board's decision the exemption provision in Bill No. 49-88, upon which its approval rests, was declared null and void and thus no longer exists. The Commission, through the authority granted to it by the General Assembly, found the bill to be in conflict with State law and declared it to be null and void. For this Court to affirm the decision of the Board of Appeals without taking into account the subsequent actions by the Commission in (1) sending formal notice of its resolution pursuant to §8-1809(1)(3), and (2) in finally approving the amended Local Program (with the exemption provision deleted) would require application of a statute that is no longer legally recognizable law. This Court is not in a position to apply such law, and as such declines to do so. If Woods Landing II seeks to rely on the exemption provision which at this time no longer exists, the only feasible argument available to them is that the §8-1809(1)(3) resolution does not apply retroactively. It is this contention that this Court will next address.

D. Even if the Commission's Adoption of the June 2nd Resolution Changed the Law, Either as a Legislative, Quasi-Legislative, or Some Other Kind of Act, the Court May Not Apply the "New Law" in the Absence of a Clear Expression of Intent that the "New Law" is to Operate Retrospectively.

The Chairman of the Chesapeake Bay Critical Areas Commission asserts that this Court is compelled to review the Woods Landing II Joint Venture Project under the recently approved County

Program without consideration of the § 3 exemption. Stated another way, the Commission's June 2nd Resolution should have the retroactive effect of voiding the final project approval obtained by the Joint Venture some time earlier. In support of that position, the Chairman directs the Court's attention to the cases of Yorkdale Corp. v. Powell, 237 Md. 121, 205 A.2d 269 (1964), Changing Point, Inc. v. Maryland Health Resources Planning Comm'n, 87 Md. App. 141, 589 A.2d 502 (1991), and Enviro-Gro v. Bockelmann, 88 Md. App. 323, 594 A.2d 1190 (1991).

Woods Landing II strongly disagrees. It suggests that the long-standing proposition, that an appellate court must ordinarily apply existing law to cases it is considering, is no longer a correct statement of the law in Maryland. Changing Point, Inc. is again cited as controlling authority to support this conclusion.

In Janda v. General Motors Corp., 237 Md. 161, 205 A.2d 228 (1964), the Court of Appeals summarized several rules of statutory construction regarding prospective versus retroactive application of statutes. The fourth rule stated by the Court was that a:

"statute which affects or controls a matter still in litigation when it became law will be applied by the court reviewing the case at the time the statute takes effect although it was not yet law when the decision appealed from was rendered, even if matters or claims of substance (not constitutionally protected), as distinguished from matters procedural or those affecting the remedy are involved, unless the Legislature intended the contrary."

Id., at 169, 205 A.2d at 228.

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Id., at 169, 205 A.2d at 228.

Similarly, the Court in Yorkdale, cited supra, stated that:

"a changed in the law after a decision below and before a final decision by the appellate court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent."

Id., at 124, 205 A.2d at 271.

However, some years later, in Washington Suburban Sanitary Commission v. Riverdale Heights Volunteer Fire Co., 308 Md. 556, 520 A.2d 1319 (1987), the Court at least partially reconsidered its position on the issue of retroactivity and held that "because it is inconsistent with the general body of Maryland law on the subject, the fourth rule in Janda is disapproved." Id., at 565, 520 A.2d at 1319.

What concerns this Court is that while the fourth rule in Janda has been expressly overruled, it would seem that the rule stated in Yorkdale, which was a zoning case, is still good law. In resolving this issue, the Court acknowledges that this is not the first case since Washington Suburban Sanitary Commission where this dilemma has surfaced. Specifically, in Enviro-Gro v. Bockelmann, cited supra, the Court of Special Appeals noted its concern in footnote 17:

Janda's fourth holding was expressly "disapproved" in Riverdale Heights Fire Co., ..., a case involving the application of an immunity statute. Yorkdale and the zoning and other cases we have cited were not overruled in Riverdale Heights, although the court's reasoning in rejecting Janda's "fourth rule" causes us some concern. We note, however, that it was somewhat limited to that factual situation, thus apparently not applicable to dissimilar factual cases. Due to the long and consistent body of law from Schooner Peggy to Yorkdale and subsequent thereto, we perceive

that the Yorkdale rule still applies in zoning cases generally, and this case specifically, until overruled or disapproved by higher authority, or by the legislature."

After conducting its own review, this Court agrees with the Court of Special Appeals and finds that the "Yorkdale rule" still does apply in zoning cases. In addition to the guidance provided by the Court of Special Appeals, this Court finds that the plain language of §8-1809(1)(3) states that project approvals granted based upon provisions of a local program found to be deficient are null and void (emphasis added). Therefore, it suggests that the intention of the General Assembly was to authorize the Commission to rescind projects previously approved.

Accordingly, the Court holds that the Commission's June 2nd Resolution does have the retroactive effect of voiding the final project approval obtained by the Woods Landing II Joint Venture in 1991, and as such the final site plans and subdivision approval for the Applicant's plans for Woods Landing II Joint Venture are null and void.

III. MUST WOODS LANDING II'S DEVELOPMENT PLAN COMPLY WITH THE MAXIMUM IMPERVIOUS SURFACES REQUIREMENT OF MD. CODE ANN., NAT. RES., § 8-1808.3 (1990)?

The last issue to be addressed concerns Woods Landing II's plan to include impervious surfaces of at least 28% of the development. To resolve this matter, the applicable State and local statutes must be considered.

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Md. Code Ann., Nat. Res., § 8-1803.3 (1990), Impervious surfaces limitation, provides in relevant part as follows:

- (a) Applicability of section. - This section applies notwithstanding:
 - (1) Any other provision of this subtitle; or
 - (2) Any criteria or guideline of the Commission adopted under this subtitle.
 - (b) Priority of section. - This section controls over any other requirement concerning impervious surfaces limitation in limited development areas and resource conservation areas in the critical area.
- ...
- (d)
 - (4) In an individual lot 1 acre or less in size is part of a subdivision approved after December 1, 1985, then man-made impervious surfaces of the lot may not exceed 25% of the lot. However, the total of the impervious surfaces over the entire subdivision may not exceed 15%.

Additionally, Md. Code Ann., Nat. Res. § 8-1813(d), provides that "[t]his section does not apply to any application initially filed prior to March 1, 1984.

Both Appellant, Woods Landing Community Association, Inc., and Intervenor/Appellant, Chairman of the Chesapeake Bay Critical Areas Commission, argue that even if this Court were to exempt the Woods Landing II Project from the County Program, the Project must still meet the requirements of § 8-1803.3 as mandated by sub-section 8-1808.3(b). Woods Landing II disputes that assertion and claims that as an exempt project under both § 8-1813(d) and the County's local program, the development plan does not have to comply with any critical area impervious surfaces

limitations, including those established by § 8-1808.3. Having previously held that the project is no longer exempt due to the Commission's formal Resolution, for Woods Landing II to now prevail on this point it must rely solely on the exemption provision found in § 8-1813(d).

This Court holds that Woods Landing II Joint Venture must comply with the maximum impervious surfaces requirements of § 8-1803.3, for again the plain language of the law requires such a result. The exemption provision in § 8-1813(d) states that "[t]his section" does not apply to any application initially filed prior to March 1, 1984, indicating that the exemption's effect is limited to that section only, whereas the applicability of the impervious surface statute governs notwithstanding "any other provision of this subtitle." § 8-1808.3(a)(1) (1990) Therefore, it appears the General Assembly intended that the impervious surface limitations should encompass and restrict all developments within the Critical Areas, and that the exemption provision of § 8-1813(d) should only excuse compliance with the requirements of that section itself. An exemption provided for in a specific section of law, absent some express authority to the contrary, can not be applied to an entire subtitle of statutory law.

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Accordingly, having considered all relevant parties' arguments, memoranda, and exhibits thereto, and having conducted a full review of the February 18, 1993 decision handed down by the Anne Arundel County Board of Appeals, it is this 10th day of Feb., 1994 hereby:

ORDERED: That the Decision of the Board of Appeals granting final project approval to Woods Landing II Joint Venture is reversed; and further

ORDERED: That any subsequent plan from Woods Landing II Joint Venture for development be required to comply strictly with Maryland's Critical Area Criteria and law; and further

ORDERED: That any subsequent plan from Woods Landing II Joint Venture for development be required to comply strictly with Md. Code Ann., Nat. Res., § 8-1803.3 (1990)


LAWRENCE H. RUSHWORTH, Judge

Copies to:

John H. Murray, Esquire
Richard A. DeTar, Esquire
Miles & Stockbridge
101 Bay Street
Easton, Maryland 21601
Attorneys for Appellants
Woods Landing Community Association, Inc.
Steven and Bonnie Treat and Albert and Betsy Kulle

Harry C. Blumenthal, Esquire
Blumenthal, Wayson, Offutt, Klos & Delavan, P.A.
121 Cathedral Street
P.O. Box 868
Annapolis, Maryland 21404
Attorney for Appellee
Woods Landing No. 2 Joint Venture

George E. H. Gay, Esquire
Assistant Attorney General
Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
Attorney for Intervenor/Appellant
John C. North, II
Chairman, Chesapeake Bay Critical Area Commission

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974- 2501

THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

May 20, 1993

Via Facsimile

Harry C. Blumenthal, Esq.
Blumenthal, Wayson, Offut, Klos and
Delevan, P.A.
121 Cathedral Street
P.O. Box 868
Annapolis, Maryland 21404-0868

RECEIVED

MAY 26 1993

Re: Woods Landing II Appeal

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Dear Mr. Blumenthal:

This will confirm our conversation of yesterday in which we discussed the above referenced matter. I asked you, on behalf of the Chesapeake Bay Critical Area Commission, whether or not you would agree to a stay of Grading Permit No.: GO-2002350 for a forty-eight hour period immediately after the permit is issued by Anne Arundel County. I explained that the Commission intends to appeal the permit if and when it is issued and that I was seeking the voluntary stay to assure my client that the subject property's status quo will be preserved until the Commission's appeal from the County's permit decision is resolved. Of course, if your client will not agree to the stay, the Commission may seek an injunction staying the each and every effect of the Board of Appeals' decision to grant subdivision approval for Subdivision No.: 73-519 while the appeal of that decision is pending in the Circuit Court.

You stated that you could not commit your client to a voluntary stay of the grading permit until you had conferred with it on the subject. You suggested that you did not know how it would respond. You explained that you would attempt to speak with your client today and that you would provide me with its position immediately after you determined what it was.

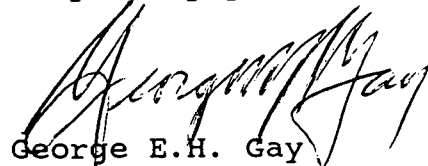
I look forward to hearing from you as soon as possible concerning this very important matter. In the event I am not in the office when you call, please indicate your client's response to my

FAX (410) 974-5206

Harry C. Blumenthal, Esq.
May 20, 1993
Page 2

secretary.

Very truly yours,

A handwritten signature in dark ink, appearing to read "George E.H. Gay". The signature is fluid and cursive, with the first name "George" being the most prominent.

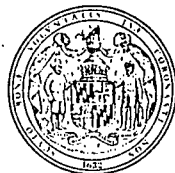
George E.H. Gay
Assistant Attorney General

cc: John C. North, II, Chairman
Sarah J. Taylor, Ph. D., Ex. Dir.
Ren Serey
Liz Zucker
Reginia Esslinger
John Murray, Esq.
Richard DeTar, Esq.

a:WL.HCBlum.ltr
CAC-492

JUDGE JOHN C. NORTH, II
CHAIRMAN
301-822-9647 OR 301-974-2418
301-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
301-974-2418/26
301-974-5338 FAX



WESTERN SHORE OFFICE
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

May 1, 1991

Ms. Penny Chalkley
Office of Planning and Zoning
Box 2700
Annapolis, MD 21404

Dear Penny:

I am writing regarding Subdivision 91-065, Woods Landing, Section II. You have informed us that the project is exempt from County Council Bill 49-88 because of its position on the wastewater allocation waiting list; however, under COMAR 14.15.02.07(2)(a), lots not individually owned should be consolidated or reconfigured to comply with the Critical Area Criteria insofar as possible. Additionally, the Habitat Protection Area provisions, including the required 100-foot buffer, and the water-dependent facilities provisions are not subject to grandfathering, and were meant to be applied to all future development. Because of these provisions, I want to encourage the developer to meet all Critical Area requirements insofar as possible, and to maintain the full 100-foot buffer to the shoreline and streams. Relevant Critical Area requirements include no disturbance in the 100-foot buffer, a limitation of 15% impervious surfaces for the overall subdivision, and a maximum of 20% forest clearing, with equal replacement of areas cleared.

Incorporating these requirements into the updated project design will be helpful in preserving the environmental amenities which are so important to homeowners' quality of life. The requirements such as buffers, minimizing impervious surfaces and maximizing forested areas ameliorate the negative impacts resulting from development, including localized flooding, deteriorated water quality and loss of important shoreline wildlife habitat.

Please call me if I can be of any assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Anne Hairston".

Anne Hairston
Natural Resources Planner

ABH
cc: Ren Serey
George Gay
AA156-91

JUDGE JOHN C. NORTH, II
CHAIRMAN
301-822-9047 OR 301-974-2418
301-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
301-974-2418/26
301-974-5338 FAX



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EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

August 29, 1991

Ms. Pamela Mannion Hale
582 Fox Paw Trail
Annapolis, Maryland 21401

Dear Ms. Hale:

Thank you for your letter and your very evident concern for environmental issues around the Chesapeake Bay. The Woods Landing Phase 2 subdivision in your area received an exemption from strict application of the County Critical Area requirements only because it had received development approvals 10 years ago and then was held up on the wastewater treatment allocation list. The 53% forest clearing and 25% impervious surface coverage proposed do not meet current standards for Limited Development Areas of the Critical Area. It is unfortunate that the developer has not followed our suggestion to meet those standards voluntarily which are designed to protect the local resources and quality of life as well as the Chesapeake Bay. However, stormwater requirements and sediment and erosion controls are fully applicable to the project, and reforestation fees will be paid. To the best of our knowledge, the developer is meeting minimum legal requirements.

The current Critical Area stormwater and sediment control requirements limit impacts of development, but do not eliminate them. We must all remain conscious of the effects of our daily activities, as well as new development on our environment and work to minimize them. I am pleased to see that you are aware and concerned. Please let us know if there is more information with which we could provide you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John C. North, II".
John C. North, II
Chairman

JCN/jjd

cc: Governor's Office/Programs
AA 156-91

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



WESTERN SHORE OFFICE
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

December 2, 1991

Ms. Penny Chalkley
Office of Planning and Zoning
MS 6303
2664 Riva Road
P O Box 2700
Annapolis, Maryland 21404

Dear Ms. Chalkley:

We received the updated submittal for Woods Landing II, Subdivision 91-065. We would like to reiterate our recommendation that the 100-foot Buffer be fully protected, impervious surfaces be limited to 15% of the site, and no more than 20% of the forest on-site be cleared.

Thank you for the opportunity to comment.

Sincerely,

Anne Hairston

Anne Hairston
Natural Resources Planner

ABH/jjd

cc: George E. H. Gay, Esq.
Mr. Ren Serey
AA 156-91

CHESAPEAKE BAY CRITICAL AREA COMMISSION

MEMORANDUM

TO: Cecily Majerus, Governor's Office
FROM: Sarah Taylor, Chesapeake Bay Critical Area Commission
RE: Woods Landing II, Final Version
DATE: July 29, 1993

PROJECT DESCRIPTION

The project site is 31.16 acres in total area. It is located along the shoreline of the upper reaches of the Little Magothy River. The project is proposed on 2 separate "areas" of the property. A total of 153 units are proposed with 12 units located on the small 7.03 acre parcel and 142 units on the big 24.13 acre parcel.

The large parcel is relatively mature deciduous woods dominated by white oak, chestnut oak, hickory in the canopy. Large trees average 18-24 inches in diameter with a number of significantly larger trees also found. Understory is dogwood, sassafras, mountain laurel and blueberry. Tidal wetlands dominated by cattail occur in the upper reaches of the Little Magothy shoreline. The tidal marshes grade into patches of nontidal wetlands near the upland edge. The shoreline is steeply sloped, but is stabilized by the forested vegetation and protected by the tidal marsh. The sloped shoreline is comprised of potential highly erodible soils (slopes greater than 15% and K factor greater than .35).

The small parcel is bisected by a nontidal wetland that drains into the Little Magothy system. The vegetation is grassy areas and patches of "young" forest.

PROJECT HISTORY

Oct. 1983 Original subdivision plan for property filed with the County.
Aug. 1984 County preliminarily approves Woods Landing Subdivision.
Apr. 1985 Subdivision included by County on a list of subdivisions which were awaiting sewer allocation.

page 2

- 1986-1988 County begins developing its Critical Area Program. Program took effect in 8/88.
- Dec. 1989 County begins to process Woods Landing II subdivision. On April 18, 1991, Woods Landing II transmits its final subdivision plan to County for review.
- May 1991 Community hears of development and requests meetings with County and developer to see if changes can be made to bring subdivision into compliance with the Critical Area Criteria. Two meetings held. Changes not made.
- Dec. 1991 County's Office of Planning and Zoning grants final site plan and subdivision approval for 142 residential units on the large area of the property and 12 residential units on the smaller tract.
- Jan. 1992 Community files an appeal with Board of Appeals. Four evenings comprise the hearing from 4/92-8/92.
- Feb. 1993 Board renders decision and denies the appeal. However, the Board recognizes that the project is not consistent with the spirit and intent of the County Program.
- Mar. 1993 Board of Appeals decision appealed and case moved to Circuit Court. Community Association has spent over \$50,000 so far to see that the subdivision site plan is made to comply with the Critical Area Law and Criteria.
- Apr. 1993 Commission files Motion to Intervene which is granted
- Jun. 1993 Commission passes a Resolution declaring portions of the Anne Arundel County Critical Area Program as inconsistent with the Criteria and the Law. (Commission took this action after having written to the County about these inconsistencies for over a year with no action on the part of the County to bring the Program into compliance.) The Case of Woods Landing II as well as Back Bay Beach also made it imperative that the Commission take action. As the County was in the midst of conducting its four year comprehensive review, the Commission also believed that such a directive would draw attention to the County that these inconsistencies had to be addressed once and for all.

ISSUES

1. The subdivision, when approved by the Planning and Zoning Office in 1991 did not comply with sections of the Critical Area Law and Criteria. County interpreted "grandfathering" as meaning "exemption" of the subdivision from the Critical Area Criteria; particularly the Habitat Protection Areas portion of the regulations. County asserts that Commission approved the exemption provisions when it approved the local Critical Area Program in 1988. Commission asserts that the Law and the criteria do not provide for exemptions, and that furthermore, even the requirements in the local Program were not followed.

2. The subdivision, when approved by the Planning and Zoning Office in 1991 did not comply with the impervious surface requirement of Section 8-1803.3 of the Critical Area Law.

FACTUAL BASIS

1. The large parcel is a riparian forest of greater than 300 feet in width as defined under the local Program, yet it is not mapped as such by the local Program even though protection of such a resource is mentioned as a criterion in the local Program and the Criteria. Retention of the woods will be virtually impossible for the project as proposed.
2. Wildlife corridors are considered Habitat Protection Areas under the County Ordinances. The parcel is currently functioning as a valuable wildlife corridor. The site will no longer have any wildlife corridor functions if developed as proposed.
3. A minimum 100 feet of Buffer from tidal wetlands is required under the local Program and the Criteria. The Buffer proposed for the project averages 50 feet. This is inconsistent and is not adequate for protecting the Little Magothy (which is 4 feet deep at this point with low flushing capability). Fifty feet is not adequate for conserving wildlife habitat and the wildlife corridor.
4. The proposed project will clear at least 53% of the forest. Excessive clearing is inconsistent with the ordinances and the limits set by the ordinances and the Criteria. County did not require reconfiguration or consolidation of lots under insofar as possible to try and meet the required limitations.

page 4

5. The requirement for reforestation is not being met. County is requesting that a fee in lieu be collected at the time of the grading permit application. 20" and greater trees will be replaced by 1 1/2" seedlings somewhere in the County and not on site. This will not help to protect the Little Magothy water quality or habitat.
6. Impervious surface coverage proposed for the site is 28%. The local Program and the Law require 15%. This is almost twice the limitation for subdivisions.
7. Anne Arundel County maps indicate that the Little Magothy River is a spawning area for finfish (white perch). There is no mention made that measures will be taken to protect these areas during development.

I hope that this gives you all the information that you need. The County is going forward with its comprehensive review. We hope that in its passage through Council that the inconsistencies cited by the Commission in the local Program will be addressed and corrected.

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-2501

THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

March 15, 1993

John H. Murray, Esquire
Miles and Stockbridge
101 Bay Street
Easton, Maryland 21601

Re: Woods Landing II

Dear John:

Enclosed find a copy of the Amended Motion we discussed today, a copy of Bob Carson's Answer thereto and Judge Wise's oral opinion concerning it. I hope you find this information helpful.

I intend to file a Motion to Intervene in the Woods Landing appeal promptly after I receive a copy of your Petition on Appeal. Please send me a copy of it at your earliest convenience.

Very truly yours,


George E.H. Gay
Assistant Attorney General

cc: John C. North, II, Chairman, CBCAC

GEHG:gg

CAC-492
a:Woods.ltr

RECEIVED

MAR 18 1993

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-2501

File

THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL
JUDITH F. PLYMYER
PAMELA D. ANDERSEN
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OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

RECEIVED

March 16, 1993

MAR 18 1993

F. Michael Harris, Esq.
Route 5, Ragan Building
P.O. Box 437
Leonardtwn, MD 20650

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

Re: In the Matter of the Application of Philip H. Dorsey, III
for a Variance in Appeal Case VAAP 87-0911 Before the St.
Mary's County Board of Appeals, Case No. CA 91-1472

Dear Mr. Harris:

Enclosed please find an original: (1) Consent Decree and Settlement Agreement; (2) Declaration of Covenants, Conditions and Restrictions; and (3) Joint Stipulation of Dismissal. Kindly have them signed by you, your clients and Mr. Densford as necessary. Thereafter, please file the Consent and record the Declaration. After the Consent is signed by a Judge, file the Stipulation. Of course, the Stipulation is contingent upon a Judge signing the Consent and the Dorseys filing the Declaration. Please send me a copy of the enclosures after they are filed and signed and/or recorded. Your anticipated assistance is appreciated.

By copy of this letter, I am advising Mr. Densford that you will be contacting him regarding this matter. Please contact me if you have any questions.

Very truly yours,

George E.H. Gay
Assistant Attorney General

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-2501

March 24, 1993

MEMORANDUM

Via Overnight

TO: Evelyn O. Cannon
Chief, Litigation

FROM: George E. H. Gay *geh*
Assistant Attorney General

RE: Motion to Intervene/Woods Landing II

Pursuant to our conversation of yesterday, please find attached a copy of the County Board of Appeals of Anne Arundel County's 2/24/93 opinion and our draft Motion to Intervene. At your earliest convenience, please let me know whether or not you think intervention is advisable.

Attachment (as stated)

GEHG:gg

cc: John C. North, II, Chairman, CBCAC, w/encl.
Marianne D. Mason, Esq.

a:Cann.ltr.
CAC-492

File

THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY

MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL

JUDITH F. PLYMYER
PAMELA D. ANDERSEN
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OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

RECEIVED

MAR 25 1993

**CHESAPEAKE BAY
CRITICAL AREA COMMISSION**

RE: An Appeal from an
Administrative Decision
of the Office of Planning
and Zoning

WOODS LANDING SECTION II
JOINT VENTURE,
Petitioner

BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY
CASE NO. BA 10-92A
HEARINGS: April 15, May 4,
July 11 & August 18, 1992

: : : : :

MEMORANDUM OF OPINION

FEB 28 1992

SUMMARY OF PLEADINGS

CHESAPEAKE DAY
CRITICAL AREA COMMISSION

This is an appeal from an administrative decision of the Office of Planning and Zoning, granting approval of Subdivision No. 73-519 and Project No. 91-065 for Woods Landing, Section II, plats 1 through 3, on property located on the south side of Woods Landing Drive and at the west end of Woods Landing Drive and bounding the southern end of the Little Magothy River, in Annapolis.

SUMMARY OF EVIDENCE

The Petitioner presented a number of items of documentary evidence and presented testimony from a civil engineer who recounted the history of the subdivision and gave extensive testimony regarding the procedures that were followed in obtaining final subdivision approval from the County. He also described the plans that the Petitioner has for development of the site, including the changes that were made at the request of the County.

Testimony on behalf of those in opposition to the appeal was presented by ten witnesses. The president of the local community association testified that the association owns property in the community and that, by a large margin, the members of the association opposed the appeal because of concerns regarding housing

density, clearing of wooded lands, and the addition of impervious surfaces. An adjacent property owner also expressed concerns about siltation occurring in the Little Magothy River, and about potential damages to water quality and wildlife. He also testified about the effect that clearing and development of the site would have on existing wildlife and their habitats. A landscape architect also testified that the Petitioner's plans could be improved in order to bring the plans more closely in line with the intent of the critical areas program. He testified particularly regarding the impact on adjacent properties of clearing, the reduced critical area buffer, and the impervious surface coverage that would exceed the County's current maximum. Two witnesses testified regarding water quality. They testified to the need for the full one hundred (100) foot buffer, and described potential dangers to adjacent waterways as a result of increased nutrient and pollutant loads. Testimony in opposition to the appeal also was presented by several other citizens and representatives of environmental organizations.

Testimony also was presented by various government employees who were familiar with the proposal. A staff member from the State Critical Areas Commission testified that she and other members of the staff had expressed concerns to the Critical Areas Commission about conflicts between the exemption provisions of county law and

the provisions of COMAR. Two environmental planners in the Office of Planning and Zoning presented testimony regarding steps that were taken to create a better development plan than had existed prior to the passage of County Council Bill No. 4988. Testimony was also presented regarding alleged errors in the testimony presented by the water quality experts who testified on behalf of the Protestants.

Finally, testimony was given by a subdivision planner and the chief of the Environmental Section of the Office of Planning and Zoning. They testified extensively regarding the history of this subdivision and the exemption provisions contained in Bill No. 4988.

All testimony was stenographically recorded and a printed transcript of the testimony may be obtained.

FINDINGS AND CONCLUSIONS

This is an appeal by the Woods Landing Community Association, Inc., Steven and Bonnie Treat and Albert and Betsy Kulle (the Appellants), from a decision of the Anne Arundel County Office of Planning and Zoning, granting final site plan approval and subdivision approval for a project known as Woods Landing Section II.

The Appellants contend that the action of the Planning and Zoning Officer was improper and in conflict with county and state

law. The Petitioner, on the other hand, contends that the action of the Planning and Zoning Officer was proper and consistent with the law. The County argues that its action was dictated by the exemption provisions contained in County Council Bill No. 49-88. Further, the County contends that, although the subdivision was exempted from critical areas requirements, the Office of Planning and Zoning obtained a number of concessions from the Petitioner which will be environmentally advantageous.

Although this case was heard over a number of days, and many witnesses testified, the Board finds that the most compelling testimony with regard to the legal issues involved was presented by two representatives from the Office of Planning and Zoning. Christopher Soldano and Joseph Elbrich testified about the history of this particular subdivision and the effect of the County Council's adoption of the local Critical Areas Program on the subdivision approval.

Mr. Elbrich testified that the original subdivision plan for this site was filed in 1983. Mr. Soldano testified that the subdivision was approved by all appropriate agencies and placed on the waiting list for sewer allocation on April 19, 1985. In 1988, pursuant to the requirements of the Natural Resources Article, the County adopted its own local Critical Areas Program. Prior to that time, Section 8-1813 of the Natural Resources Article controlled critical areas considerations in jurisdictions which had not

adopted their own local programs. Under state law, Section 8-1813 did not apply to any application filed prior to March 1, 1984. According to the County's records, the Petitioner's plan was filed in 1983.

When the County Council adopted Bill No. 49-88, subdivision projects then on the waiting list for sewer allocations were specifically exempted from the provisions of the law. The State Critical Areas Commission formally approved the County's program by letter dated June 10, 1988 (County Exhibit No. 5).

Much testimony was presented at the hearings about the effect of this exemption of subdivisions on the waiting list. In fact, a staff member in the office of the Critical Areas Commission testified that staff members have raised concerns about the exemption provisions. However, she acknowledged that Anne Arundel County never was told that its program was deficient (at least prior to the time this hearing began) and that the Commission had approved the local program.

Mr. Elbrich conceded that the County's program currently is being reviewed by the State Commission (of which he is a member). As of the date of his testimony, however, no specific action had been taken with regard to the County program.

This Board has taken great pains to review all of the testimony and evidence submitted in this appeal. The Board is conscious of its obligation to decide this case under the applica-

ble law, but also cannot fail to notice environmental consequences which may result from development that is inconsistent with the spirit and intent of the Critical Areas Program. Unfortunately, the Board concludes that its hands are tied by the exemption provisions of County Council Bill No. 49-88. The Board may not agree that proposed subdivisions should have been completely exempted from the Critical Areas Program simply because they were on the sewer allocation waiting list, but the Board's views in this regard are of no consequence. The fact is that the County Council adopted an ordinance that provided for such an exemption. Subsequently, the State Critical Areas Commission approved the County's program, including the exemption provisions. Testimony indicated that the County has applied the exemption provisions consistently, but has adopted a practice of working with developers in an effort to obtain concessions to subdivision plans in an effort to reduce the impact of the development on the environment.

Testimony from the witnesses from the Office of Planning and Zoning established that the Woods Landing Section II Subdivision complied with all appropriate requirements in order for the exemption under Council Bill No. 49-88 to be granted. This testimony was unrebutted. Whether or not the exemption provisions continue in existence after the Critical Areas Commission has concluded its review of the County's program remains to be seen. What is clear, however, is that this Board is not at liberty to

ignore the exemption provisions as adopted by the Council and as approved by the State Commission. The plain language of the law provides for an exemption for subdivisions such as that currently before the Board. The Board cannot ignore the requirements of the law or act in derogation thereof, despite the personal interests of Board Members who would prefer to see the full range of protections intended by the Critical Areas Program applied to this site. During its on-site inspection of the property, the Board was struck by the beauty of this site, which was so aptly described as a pristine setting. Thankfully, the Office of Planning and Zoning was able to obtain the Petitioner's consent to a modification of its former site plan so that sensitive environmental issues could be addressed to some extent.

Despite its misgivings, the Board concludes that it is compelled by existing law to permit this subdivision to move forward.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 19th day of February, 1993, by the County Board of Appeals of Anne Arundel County, ORDERED, that the appeal is hereby denied and the administrative decision of the Planning and Zoning Officer is hereby sustained.

p. 8 is coming first, then 1-7

Post-It™ brand fax transmittal memo 7671		# of pages 8
To: George Gay	From: Sarah Taylor	
Co: DNR	Co: CBCAC	
Ext: Legal	Phone: 974-2426	
Fax: 974-5206	Fax: 974-5338	

BA 10-92A
Woods Landing Section II
Joint Venture

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.

COUNTY BOARD OF APPEALS OF
ANNE ARUNDEL

F. George Deuringer
F. George Deuringer, Chairman

John W. Boring
John W. Boring, Vice Chairman

William C. Edmonston
William C. Edmonston, Member

Barbara M. Hale
Barbara M. Hale, Member

Anthony V. LaMartina
Anthony V. LaMartina, Member

David M. Schafer
David M. Schafer, Member

(Joseph A. Johnson, Member, dissents from the opinion of the majority and would grant the appeal.)

ANNE ARUNDEL COUNTY BOARD
OF APPEAL - APPEAL NO. BA 10-92 A

IN THE
CIRCUIT COURT

In the Matter of the Appeal of
Woods Landing Community Assoc.,
Inc., et al., from a Decision
of the Planning and Zoning Officer

FOR
ANNE ARUNDEL COUNTY

Case No. _____

* * * * *

ORDER

Upon consideration of the Motion to Intervene of John C.
North, II, Chairman, Chesapeake Bay Critical Area Commission, it is
and shall be this _____ day of _____, 1993

ORDERED, that Chairman North shall be and is granted leave to
intervene in this appeal as an Appellant, and it is further

ORDERED, that Chairman North shall file his Answer to Petition
on Appeal promptly upon his receipt of this order.

JUDGE

Copies sent to:

Harry C. Blumenthal, Esquire
Blumenthal, Wayson, Offit,
Klos & Delavan
121 Cathedral Street
P.O. Box 868
Annapolis, Maryland 21404-0868

Anne Arundel County
Board of Appeals
Room 102-A Arundel Center
44 Calvert Street
Annapolis, Maryland 21401

Jamie B. Insley, Esquire
Anne Arundel County Office of Law
Arundel Center
P.O. Box 1700
Annapolis, Maryland 21404

John H. Murray, Esquire
Miles & Stockbridge
101 Bay Street
Easton, Maryland 21601

ANNE ARUNDEL COUNTY BOARD
OF APPEAL - APPEAL NO. BA 10-92 A

IN THE
CIRCUIT COURT

In the Matter of the Appeal of
Woods Landing Community Assoc.,
Inc., et al., from a Decision
of the Planning and Zoning Officers

FOR
ANNE ARUNDEL COUNTY

DRAFT

Case No. C-93-2133-AA

* * * * *

ANSWER TO PETITION FOR APPEAL

John C. North, II, Chairman, Chesapeake Bay Critical Area Commission ("Chairman North"), by this attorneys, J. Joseph Curran, Jr., Attorney General, and George E. H. Gay, Assistant Attorney General, pursuant to Rule B9, files this Answer to Petition for Appeal and states:

1. Chairman North admits the allegations contained in Paragraph One of the Petition for Appeal ("Petition").
2. Chairman North generally admits that the decision and legal conclusions of the County Board of Appeals of Anne Arundel County ("Board") in Appeal No.: BA 10-92 A are erroneous as a matter of law. Specifically, he asserts that the Board incorrectly applied the provisions of the Anne Arundel County Critical Area Program ("County Program") referred to in Paragraph 2(a) of the Petition.
3. Chairman North admits the allegations contained in Paragraph 3 of the Petition.

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974- 2501

April 5, 1993

THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL
JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
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GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

Hand Delivered

Ms. Linda Connell
Law Department
Anne Arundel County Circuit Court
Court House
Annapolis, Maryland 21401

RE: In the Matter of the Appeal of Woods Landing
Community Association, Inc., et al., from a
Decision of the Planning and Zoning Officer before
the County Board of Appeals of Anne Arundel County
in Appeal Case BA 10-92-4, Case No.: C-93-2133-AA

Dear Ms. Connell:

Please file the enclosed Motion to Intervene in the above-
referenced case.

Kindly stamp the date the original Motion is filed on the
enclosed copy of same and return the copy to my courier.

Thank you for your anticipated cooperation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "George E. H. Gay".

George E. H. Gay
Assistant Attorney General

GEHG:cjw

Enclosures (as stated)

ANNE ARUNDEL COUNTY BOARD
OF APPEAL - APPEAL NO. BA 10-92 A

In the Matter of the Appeal of
Woods Landing Community Assoc.,
Inc., et al., from a Decision
of the Planning and Zoning Officer

IN THE
CIRCUIT COURT
FOR
ANNE ARUNDEL COUNTY

Case No. C-93-2133-AA

* * * * *

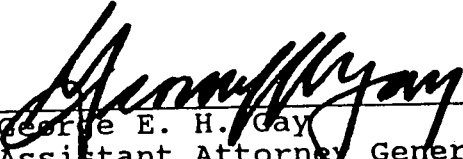
MOTION TO INTERVENE

John C. North, II, Chairman, Chesapeake Bay Critical Area Commission ("Chairman North"), by his attorneys, J. Joseph Curran, Jr., Attorney General, and George E. H. Gay, Assistant Attorney General, pursuant to Natural Resources Article §8-1812(a), Annotated Code of Maryland and Rule 2-214 files this Motion to Intervene and states:

1. Chairman North has an unconditional right to intervene in this appeal.
2. Additionally, this appeal draws in question the validity of the Anne Arundel County Chesapeake Bay Critical Area program and COMAR 27.02; consequently, Chairman North may intervene in it.
3. The attached Memorandum of Grounds and Authorities is incorporated herein.
4. A draft of Chairman North's Answer to the Appellants' Petition for Appeal is attached hereto.

WHEREFORE, Chairman North moves for leave to intervene and files the attached draft Answer to Petition for Appeal.

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL


George E. H. Day
Assistant Attorney General
Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, Maryland 21401
(410) 974-2501

Attorneys for Chairman North

MEMORANDUM OF GROUNDS AND AUTHORITIES

BACKGROUND

On February 19, 1993, the County Board of Appeals of Anne Arundel County ("Board") sustained the Anne Arundel County Planning and Zoning Officer's grant of final site plan and subdivision approval to Woods Landing II Joint Venture ("Decision"). On March 15, 1993, Woods Landing Community Association, Inc., Steven and Bonnie Treat, and Albert and Betsy Kulle ("Appellants") filed an Order for Appeal from the Decision, and on March 22, 1993, they filed their Petition on Appeal ("Petition"). Within three weeks, Chairman North filed his Motion to Intervene ("Motion").

ARGUMENT

I. Intervention by Right

Rule 2-214(a) provides in pertinent part: "Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law...." Chairman North has an unconditional right to intervene in this appeal. Natural Resources Article, §8-1812(a), Annotated Code of Maryland.

In 1984, the General Assembly passed the Chesapeake Bay

Critical Area Protection Program, Natural Resources Article ("NR"), §§8-1801 et seq., Annotated Code of Maryland ("Act"). The Act established both a Resource Protection Program for the Chesapeake Bay and the Chesapeake Bay Critical Area Commission. ("Commission"). NR §§8-1801 and 1803. §8-1812(a) of the Act provides in relevant part:

After the Commission has approved or adopted a program, the Chairman of the Commission has standing and the right and authority to initiate or intervene in any administrative, judicial, or other original proceeding or appeal in this State concerning a project approval in the Chesapeake Bay Critical Area. (emphasis added).

The Commission approved the Anne Arundel County Program on May 18, 1988. It became effective on August 22, 1988 via County Council Bill 49-88 ("County Program"). It is incorporated into the Anne Arundel County Code in Articles 2, 3, 21, 24, 26 and 28. The Decision concerned final site plan and subdivision approval which is "project approval" in the context of §8-1812(a) of the Act. Project approval is defined in NR §8-1802(a)(11) (1992 Cumulative Supplement) as:

(i) 'Project Approval' means the approval of development, other than development by a State or local government agency, in the Chesapeake Bay Critical Area by the appropriate local approval authority.

(ii) 'Project approval' includes:

1. Approval of subdivision plats and site plans;
2. Inclusion of areas within floating zones;
3. Issuance of variances, special exceptions, and conditional use permits; and

4. Approval of rezoning.

(iii) "Project approval" does not include building permits.

The Project approval at issue before the Board involved development in the Chesapeake Bay Critical Area. There is not and can not be any reasonable dispute of this.

To exercise his unconditional right to intervene, all Chairman North must do is file a timely Motion to Intervene. Rule 2-214. See also Department of State Planning v. Hagerstown, 288 Md. 9, 16 (1980).

Timeliness in the context of a Motion to Intervene is to be considered from all the circumstances of a case. Montgomery County v. Ian Corp., 282 Md. 459 (1978). The primary factors to be considered are:

1. The purpose for which the intervention is sought;
2. The reasons for the delay in seeking intervention;
3. The extent to which the proceedings have progressed at the time the Motion to Intervene is filed; and
4. The probability of prejudice to the existing parties.

Maryland Radiological v. Health Services, 285 Md. 383 (1989).

A review of these factors reveals that the Motion is timely.

A. Purpose

Chairman North seeks to intervene to carry out his duties and those of the Commission pursuant to Act and insure that the integrity of the State's Critical Area Resource Protection Program is maintained. He intends to provide written and oral argument to the Court concerning the interpretation and application of the Anne

Arundel County Critical Area Program ("County Program"), COMAR 27.01 and the Act in the context of Woods Landing II Joint Venture's application for final site plan and subdivision approval. He is well suited to represent and explain the significance of the Commission's approval in 1988 of the County Program. Further, he is uniquely qualified to provide the administrative interpretation of COMAR 27.01 et seq. and the County Program in the context of this case.

No other party seeks to do these things. No other party has these interests. Only Chairman North is statutorily charged with overseeing the various local jurisdictions' implementation of their Critical Area programs. The Appellants are interested only in the outcome of their appeal from the underlying decision of the Anne Arundel County Planning and Zoning Officer. They are not concerned with the overall interpretation and validity of the County Program or the other factors discussed above.

B. Delay

There has been no delay in Chairman North's filing of the Motion. The Petition was filed on March 22, 1993. The Motion was filed less than three weeks later.

C. Progression

Woods Landing II Joint Venture has not filed its Answer to the Petition. No significant action whatsoever has occurred in the Appeal. The administrative record has not been filed. The time period for filing B12 memoranda has not begun to run. Consequently, Woods Landing II Joint Venture has not filed its Rule

B12 memorandum. No hearings on this case have been scheduled.

D. Prejudice

Absolutely no prejudice whatsoever to any party will result from granting this Motion. The Appellee has not yet even filed its Answer to the Petition.

II. Permissive Intervention

Assuming, arguendo, that this Court determines that Chairman North may not intervene in this appeal as a matter of right, it should grant him permission to intervene pursuant to Rule 2-214 (b).

Section One of this Argument is incorporated herein.

The Commission's interests in the Appeal are not the same as those of the other Appellants. The Commission is concerned with implementation of the County Program in and of itself and as a part of the State's entire Chesapeake Bay Resource Protection Program. Further, the Commission is interested in a uniform interpretation/application of COMAR 27.01. Whereas, the Appellants are simply seeking to reverse the Anne Arundel County Planning and Zoning Officer's approval of one isolated final site plan and subdivision request. As a consequence of the dissimilar interests of the Commission and the Appellants, representation of the Commission's interests in the Appeal may be inadequate if it is not permitted to participate as a party.

Conclusion

Chairman North may intervene as a matter of right. The Motion

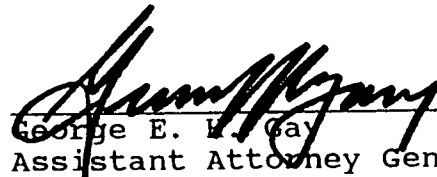
is timely filed. His interests in this appeal are significant, and they are not or may not be adequately represented by any other party. Consequently, the Motion must be granted.

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL


George E. H. Gay
Assistant Attorney General

CERTIFICATE OF RULE B9 AND SERVICE

I hereby certify that on this 5th day of April, 1993, prior to filing the foregoing Motion to Intervene, a copy of it was served, pursuant to Rule 1-321, on John H. Murray, Esq., Miles & Stockbridge, 101 Bay Street, Easton, Maryland 21601; County Board of Appeals of Anne Arundel County (hand delivered), Room 102-A, Arundel Center, 44 Calvert Street, Annapolis, Maryland 21401; Jamie B. Insley, Esq., Anne Arundel County Office of Law, Arundel Center, P.O. Box 1700, Annapolis, Maryland 21404; and Harry C. Blumenthal, Esq., 121 Cathedral Street, P.O. Box 868, Annapolis, Maryland 21404-0868.


George E. H. Gay
Assistant Attorney General

CERTIFICATE OF NR §8-1812(a) COMPLIANCE

I hereby certify that on the 5th day of April 1993, prompt written notice of the filing of this Motion to Intervene was sent by Chairman North to each member of the Chesapeake Bay Critical Area Commission. A copy of this notice is attached hereto and incorporated herein as Exhibit #1.

George E. H. Gay
Assistant Attorney General

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX



SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX

WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

April 5, 1993

RE: Anne Arundel County Judicial Appeals/
§8-1812(a) Notice

Dear Commission Member:

In a March 22, 1993 letter from me, you were advised that I have initiated an appeal on the Commission's behalf in the following case in Anne Arundel County:

In the Matter of the Appeal of Woods Landing Community Association, Inc., et al., from a Decision of the Planning and Zoning Officer before the County Board of Appeals of Anne Arundel County in appeal case BA 10-92-4, Case No.: C-93-2133AA

This information was incorrect. Instead, I directed that a Motion to Intervene be filed. This was done on April 5, 1993. My reasons for filing the Motion to Intervene are the same as those set forth in my March 22, 1993 letter. Namely, the Commission staff and I collectively believe that the County Board of Appeals of Anne Arundel County erroneously sustained approval of Woods Landing II Joint Venture's request for final site plan and subdivision approval.

In accordance with Natural Resources Article, §8-1812, Annotated Code of Maryland, copy previously provided, if you disapprove of the filing of the Motion to Intervene in this case, please notify me in writing within 35 days after the date of this notice. As provided in §8-1812, if 13 members of the Commission indicate disapproval of my action in a timely manner, I shall withdraw it. Please note the other procedural safeguards set forth in §8-1812.

Thank you for your anticipated cooperation. The full Commission file on this matter is available at the Commission office for your review. Kindly disregard my March 22, 1993 letter regarding this matter.

Very truly yours,

John C. North, II
John C. North, II
Chairman

BEHG

JCN:cjw

cc: All other Commission members
George E. H. Gay, Assistant Attorney General

EXHIBIT 1

Commission Members
April 5, 1993
Page 2

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on April 5, 1993, I mailed a copy of this §8-1812(a) Notice, first class mail, postage prepaid, to each member of the Chesapeake Bay Critical Area Commission.

H. Christine Ward
Christine Ward

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
RALPH S. TYLER, III
DEPUTY ATTORNEY GENERAL



STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

MAY 26 1993 DEPARTMENT OF NATURAL RESOURCES

TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

(410) 974- 2501

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

F.
THOMAS A. DEMING
ASSISTANT ATTORNEY GENERAL
COUNSEL TO SECRETARY
MARIANNE D. MASON
ASSISTANT ATTORNEY GENERAL
DEPUTY COUNSEL
JUDITH F. PLYMYER
PAMELA D. ANDERSEN
PAMELA P. QUINN
SEAN COLEMAN
SHARON B. BENZIL
MEREDITH E. GIBBS
GEORGE E.H. GAY
OLGA M. BRUNING
EILEEN E. POWERS
STUART G. BUPPERT, II
JODI R. O'DAY
ASSISTANT
ATTORNEYS GENERAL

May 20, 1993

Via Facsimile

Harry C. Blumenthal, Esq.
Blumenthal, Wayson, Offut, Klos and
Delevan, P.A.
121 Cathedral Street
P.O. Box 868
Annapolis, Maryland 21404-0868

Re: Woods Landing II Appeal

Dear Mr. Blumenthal:

This will confirm our conversation of yesterday in which we discussed the above referenced matter. I asked you, on behalf of the Chesapeake Bay Critical Area Commission, whether or not you would agree to a stay of Grading Permit No.: GO-2002350 for a forty-eight hour period immediately after the permit is issued by Anne Arundel County. I explained that the Commission intends to appeal the permit if and when it is issued and that I was seeking the voluntary stay to assure my client that the subject property's status quo will be preserved until the Commission's appeal from the County's permit decision is resolved. Of course, if your client will not agree to the stay, the Commission may seek an injunction staying the each and every effect of the Board of Appeals' decision to grant subdivision approval for Subdivision No.: 73-519 while the appeal of that decision is pending in the Circuit Court.

You stated that you could not commit your client to a voluntary stay of the grading permit until you had conferred with it on the subject. You suggested that you did not know how it would respond. You explained that you would attempt to speak with your client today and that you would provide me with its position immediately after you determined what it was.

I look forward to hearing from you as soon as possible concerning this very important matter. In the event I am not in the office when you call, please indicate your client's response to my

FAX (410) 974-5206



STATE OF MARYLAND

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
(410) 974-2501

May 25, 1993

Via Facsimile

Harry C. Blumenthal, Esq.
Blumenthal, Wayson, Offut, Klos
and Delavan, P.A.
P.O. Box 868
Annapolis, Maryland 21404-0868

RECEIVED

MAY 27 1993

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

RE: In the Matter of the Appeal of Woods Landing Community Association, Inc., et al., from a Decision of the Planning and Zoning Officer before the County Board of Appeals of Anne Arundel County in Appeal Case BA 10-92-4, Case No. C-93-2133-AA

Dear Mr. Blumenthal:

This will confirm that you advised my office yesterday that your client will not undertake excavation as per my May 19, 1993 request. Consequently, you agreed, on behalf of Woods Landing II Joint Venture, to a stay of Grading Permit No.: GO-2002350 for a forty eight hour period immediately after the permit is issued by Anne Arundel County.

If this is in any way inconsistent with your client's position as conveyed to my office by you, kindly let me know immediately.

Very truly yours,

George E. H. Gay
Assistant Attorney General

GEHG:cjw

cc: John C. North, II, via Fax/Easton and Annapolis
Sarah J. Taylor, Ph.D., Ex. Dir., via Fax
Ren Serey
Liz Zucker
Regina Esslinger
John Murray, Esq.
Richard DeTar, Esq.

BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY
CASE NO. BA 10-92A

HEARINGS: April 15, May 4,
July 11 & August 18, 1992

• • • • •

FEB 23 1993

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

SUMMARY OF EVIDENCE

Testimony on behalf of those in opposition to the appeal was presented by ten witnesses. The president of the local community association testified that the association owns property in the community and that, by a large margin, the members of the association opposed the appeal because of concerns regarding housing

density, clearing of wooded lands, and the addition of impervious surfaces. An adjacent property owner also expressed concerns about siltation occurring in the Little Magothy River, and about potential damages to water quality and wildlife. He also testified about the effect that clearing and development of the site would have on existing wildlife and their habitats. A landscape architect also testified that the Petitioner's plans could be improved in order to bring the plans more closely in line with the intent of the critical areas program. He testified particularly regarding the impact on adjacent properties of clearing, the reduced critical area buffer, and the impervious surface coverage that would exceed the County's current maximum. Two witnesses testified regarding water quality. They testified to the need for the full one hundred (100) foot buffer, and described potential dangers to adjacent waterways as a result of increased nutrient and pollutant loads. Testimony in opposition to the appeal also was presented by several other citizens and representatives of environmental organizations.

Testimony also was presented by various government employees who were familiar with the proposal. A staff member from the State Critical Areas Commission testified that she and other members of the staff had expressed concerns to the Critical Areas Commission about conflicts between the exemption provisions of county law and

the provisions of COMAR. Two environmental planners in the Office of Planning and Zoning presented testimony regarding steps that were taken to create a better development plan than had existed prior to the passage of County Council Bill No. 4988. Testimony was also presented regarding alleged errors in the testimony presented by the water quality experts who testified on behalf of the Protestants.

Finally, testimony was given by a subdivision planner and the chief of the Environmental Section of the Office of Planning and Zoning. They testified extensively regarding the history of this subdivision and the exemption provisions contained in Bill No. 4988.

All testimony was stenographically recorded and a printed transcript of the testimony may be obtained.

FINDINGS AND CONCLUSIONS

This is an appeal by the Woods Landing Community Association, Inc., Steven and Bonnie Treat and Albert and Betsy Kulle (the Appellants), from a decision of the Anne Arundel County Office of Planning and Zoning, granting final site plan approval and subdivision approval for a project known as Woods Landing Section II.

The Appellants contend that the action of the Planning and Zoning Officer was improper and in conflict with county and state

BA 10-92A
Woods Landing Section II
Joint Venture

law. The Petitioner, on the other hand, contends that the action of the Planning and Zoning Officer was proper and consistent with the law. The County argues that its action was dictated by the exemption provisions contained in County Council Bill No. 49-88. Further, the County contends that, although the subdivision was exempted from critical areas requirements, the Office of Planning and Zoning obtained a number of concessions from the Petitioner which will be environmentally advantageous.

Although this case was heard over a number of days, and many witnesses testified, the Board finds that the most compelling testimony with regard to the legal issues involved was presented by two representatives from the Office of Planning and Zoning. Christopher Soldano and Joseph Elbrich testified about the history of this particular subdivision and the effect of the County Council's adoption of the local Critical Areas Program on the subdivision approval.

Mr. Elbrich testified that the original subdivision plan for this site was filed in 1983. Mr. Soldano testified that the subdivision was approved by all appropriate agencies and placed on the waiting list for sewer allocation on April 19, 1985. In 1988, pursuant to the requirements of the Natural Resources Article, the County adopted its own local Critical Areas Program. Prior to that time, Section 8-1813 of the Natural Resources Article controlled critical areas considerations in jurisdictions which had not

adopted their own local programs. Under state law, Section 8-1813 did not apply to any application filed prior to March 1, 1984. According to the County's records, the Petitioner's plan was filed in 1983.

When the County Council adopted Bill No. 49-88, subdivision projects then on the waiting list for sewer allocations were specifically exempted from the provisions of the law. The State Critical Areas Commission formally approved the County's program by letter dated June 10, 1988 (County Exhibit No. 5).

Much testimony was presented at the hearings about the effect of this exemption of subdivisions on the waiting list. In fact, a staff member in the office of the Critical Areas Commission testified that staff members have raised concerns about the exemption provisions. However, she acknowledged that Anne Arundel County never was told that its program was deficient (at least prior to the time this hearing began) and that the Commission had approved the local program.

Mr. Elbrich conceded that the County's program currently is being reviewed by the State Commission (of which he is a member). As of the date of his testimony, however, no specific action had been taken with regard to the County program.

This Board has taken great pains to review all of the testimony and evidence submitted in this appeal. The Board is conscious of its obligation to decide this case under the applica-

ble law, but also cannot fail to notice environmental consequences which may result from development that is inconsistent with the spirit and intent of the Critical Areas Program. Unfortunately, the Board concludes that its hands are tied by the exemption provisions of County Council Bill No. 49-88. The Board may not agree that proposed subdivisions should have been completely exempted from the Critical Areas Program simply because they were on the sewer allocation waiting list, but the Board's views in this regard are of no consequence. The fact is that the County Council adopted an ordinance that provided for such an exemption. Subsequently, the State Critical Areas Commission approved the County's program, including the exemption provisions. Testimony indicated that the County has applied the exemption provisions consistently, but has adopted a practice of working with developers in an effort to obtain concessions to subdivision plans in an effort to reduce the impact of the development on the environment.

Testimony from the witnesses from the Office of Planning and Zoning established that the Woods Landing Section II Subdivision complied with all appropriate requirements in order for the exemption under Council Bill No. 49-88 to be granted. This testimony was un rebutted. Whether or not the exemption provisions continue in existence after the Critical Areas Commission has concluded its review of the County's program remains to be seen. What is clear, however, is that this Board is not at liberty to

ignore the exemption provisions as adopted by the Council and as approved by the State Commission. The plain language of the law provides for an exemption for subdivisions such as that currently before the Board. The Board cannot ignore the requirements of the law or act in derogation thereof, despite the personal interests of Board Members who would prefer to see the full range of protections intended by the Critical Areas Program applied to this site. During its on-site inspection of the property, the Board was struck by the beauty of this site, which was so aptly described as a pristine setting. Thankfully, the Office of Planning and Zoning was able to obtain the Petitioner's consent to a modification of its former site plan so that sensitive environmental issues could be addressed to some extent.

Despite its misgivings, the Board concludes that it is compelled by existing law to permit this subdivision to move forward.

ORDER

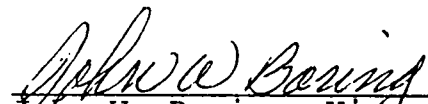
For the reasons set forth in the foregoing Opinion, it is this 19th day of February, 1993, by the County Board of Appeals of Anne Arundel County, ORDERED, that the appeal is hereby denied and the administrative decision of the Planning and Zoning Officer is hereby sustained.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

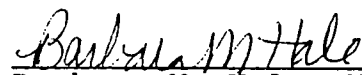
If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.

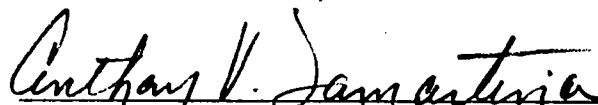
COUNTY BOARD OF APPEALS OF
ANNE ARUNDEL

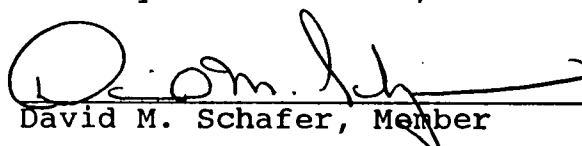

F. George Deuringer, Chairman


John W. Boring, Vice Chairman


William C. Edmonston, Member


Barbara M. Hale, Member


Anthony V. LaMartina, Member


David M. Schafer, Member

(Joseph A. Johnson, Member,
dissents from the opinion of
the majority and would grant
the appeal.)

BEFORE THE COUNTY BOARD OF APPEALS
FOR ANNE ARUNDEL COUNTY, MARYLAND

IN THE MATTER OF:

Case No. BA 10-92A

WOODS LANDING II
Subdivision 73-519
Project 91-065

* * * * *

CLOSING ARGUMENT OF ANNE ARUNDEL COUNTY, MARYLAND

Anne Arundel County, Maryland, and its Office of Planning and Zoning, hereby submit this closing discussion in the above referenced matter.

The instant case is an appeal of final subdivision approval for Woods Landing, Section II, a subdivision placed on the water/wastewater waiting list for the Broadneck Peninsula. The arguments and evidence presented by the Appellants focus on one primary issue: compliance with the Chesapeake Bay Critical Area law.

This subdivision is plainly exempted from the Critical Area law by virtue of Section 3 of Bill No. 49-88, at page number 75. That section states, in pertinent part:

(3) Proposed subdivisions that were placed by the County on the waiting list for a water or wastewater allocation that have complied with the provisions of Bills No. 42-86 or 90-86 are exempt from this Ordinance.

The testimony of County witnesses expressly indicates that this subdivision falls into this category of exempted subdivisions.

The subdivision, having been reviewed and approved for all subdivision criteria, would have had final signature but for its placement on the waiting list.

Nevertheless, the County made further requirements of the developer, including stormwater management and the establishment of substantial buffers. There can be no doubt, based upon the testimony of the developer's engineer and County planners, that the redesigned plan is a dramatic improvement over the original plan in minimizing its impact on the environment. And this night-and-day change in the plan was imposed solely on the basis of an internal policy to do one better than the law mandates. As testified by Mr. Soldano, the project planner for this subdivision, similarly situated subdivisions have been required to make similar improvements.

This case is distinguishable from others the Board has heard in recent months. In those cases, there may have been an issue as to what was required of a developer in meeting the local plan requirement of compliance "insofar as possible." Here we have simple, clear language which excludes the subdivision out of the Critical Area review. It is not a question of degree. It is not a question of interpretation.

Further, it is clear from the evidence that the local Critical Area law was approved in its entirety by the Chesapeake Bay Critical Area Commission. Perhaps, as was established before the Board, the Critical Area Commission and the County will establish a revised local program to address current concerns based upon the

required state-wide review of local plans. But no mandatory action has been taken by the State to declare any portion of the local program in violation or to require change in the program. Nor did the Critical Area Commission, being well advised of the issues in this case, chose to intervene in the hearing through its counsel in the Office of the Attorney General.

Several ancillary issues were raised by protestants. Of them, only one was notable. Mr. Klein, a witness for the protestants, attempted to convince the Board that it needs to apply certain Maryland state standards for the run-off of copper into the Little Magothy River. He projected massive amounts of copper run-off to the detriment of the receiving water body. This is not the case. Meosotis C. Curtis, of the Office of Planning and Zoning, coming before the Board with impressive credentials, explained the threefold errors in Mr. Klein's basic assumptions.

First, Mr. Klein made incorrect assumptions as to the salinity of the water. Mr. Klein's report was based upon toxicity applicable only to coastal areas in the state which drain directly to the Atlantic Ocean. This is not true with the Little Magothy River, a tributary to the Chesapeake Bay.

Next, Mr. Klein based his estimate of the concentration of copper on the findings of copper in run-off from a study examining Washington, D.C., Baltimore, Maryland and other densely urban sites located across the nation. The standard he used was greater than 99% of the concentrations measured during the Washington, D.C. "NURP" study, thus skewing the results of the analysis. In point

of fact, actual monitoring in the County shows the concentrations used by Mr. Klein to be highly unlikely for this area.

Third, Mr. Klein used inappropriate calculations for copper run-off by failing to consider the effect of dilution. Ms. Curtis stated that the studies show that the proposed subdivision would have a minuscule impact in its addition of copper to the Little Magothy, so little as to be unmeasurable.

Protestants have made to this Board an impassioned plea to "stop the madness" and preserve the waters of the Chesapeake Bay. Preservation is clearly the goal of the environmental staff of the Office of Planning and Zoning. But it can only do so within the confines of the law. The law is made by legislatures. And in the legislative process, there must be lines of delineation - a determination of what land the law impacts. If preservation was the only issue, perhaps the law would require lots already developed with homes to lessen impervious surface, retrofit with stormwater management facilities, or even reconstruct buildings.

This is not a case of good guys versus bad guys, citizens versus developer. This is not a case of the County "taking sides." This is a case requiring a simple determination of the applicable law. For every law, there is a point of starting. Those projects which come in after the starting date are reviewed under new law. Those which are exempted or predate the law comply with the law as it was. The Critical Area law of this County exempts this project. Having required the developer to make substantial plan changes in the spirit of environmental protection, the subdivision was

approved - as any subdivision would be approved which met the requirements of law.

Based upon these considerations, the Board should affirm the approval of the subdivision and deny the appeal.

Respectfully submitted,



Jamie B. Baer
Senior Assistant County Attorney
Office of Law
P.O. Box 2700
Annapolis, Maryland 21404

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 10th day of September, 1992, a copy of the foregoing Closing Argument of Anne Arundel County was mailed, postage prepaid, to:

Harry Blumenthal, Esquire
Blumenthal and Wayson
P.O. Box 868
Annapolis, Maryland 21404

John H. Murray, Esquire
Miles and Stockbridge
101 Bay Street
Easton, Maryland 21601-2703



Jamie B. Baer

ANNE ARUNDEL COUNTY BOARD
OF APPEALS - APPEAL NO. BA 10-92A

* IN THE
* CIRCUIT COURT
*
* FOR
* ANNE ARUNDEL COUNTY
* Case No. C93-2133

In the Matter of the Appeal of
Woods Landing Community Assoc.,
Inc., et al., from a Decision
of the Planning and Zoning Officer

* * * * *

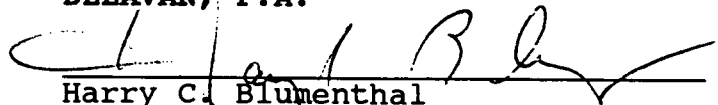
ANSWER TO PETITION FOR APPEAL

Woods Landing No. 2 Joint Venture, Appellee, the applicant for subdivision of the property which is the subject matter of the within captioned case, by Harry C. Blumenthal, its attorney, responds to the Petition for Appeal filed herein, and states as follows:

1. The Appellee admits the allegations set forth in paragraph 1 of the Petition.
2. The Appellee denies the allegations set forth in paragraph 2 of the Petition.
3. The Appellee denies the allegations set forth in paragraph 3 of the Petition.

WHEREFORE, the Appellee requests that this Court dismiss the Petition for Appeal filed herein, and that the Court award such other and further relief as the nature of this case may require.

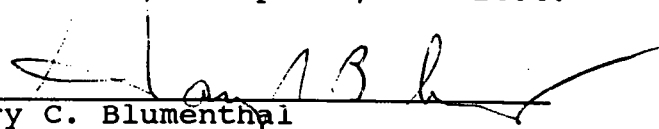
**BLUMENTHAL, WAYSON, OFFUTT, KLOS &
DELAN, P.A.**



Harry C. Blumenthal
121 Cathedral Street
P.O. Box 868
Annapolis, MD 21404
(410)280-9300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of April, 1993, a copy of the foregoing Answer to Petition for Appeal was mailed, first class mail, postage prepaid, to the Board of Appeals of Anne Arundel County, Arundel Center, Annapolis, MD 21401, John H. Murray, Esq., Miles & Stockbridge, 101 Bay Street, Easton, MD 21601, Richard A. DeTar, Esq., Miles & Stockbridge, 101 Bay Street, Easton, MD 21601, and Jamie Baer Insley, Esq., Assistant County Attorney of Anne Arundel County, Office of Law, P.O. Box 2700, Annapolis, MD 21404.



Harry C. Blumenthal

Woods Landing
Phase II



Anne
AA 159-91

William Donald Schaefer
Governor

**Maryland Department of Natural Resources
Water Resources Administration**

Tawes State Office Building
Annapolis, Maryland 21401

Torrey C. Brown, M.D.
Secretary

Catherine P. Stevenson
Director

"A Commitment to Excellence in Managing Maryland's Water Resources"

December 4, 1991

Philip E. Ratcliff
Woods Landing Joint Venture
2613 Cabover Drive
Hanover, Maryland 21076

RECEIVED

DEC 6 1991

CRITICAL AREA COMMISSION

Application Tracking #: 199260674
Nontidal Wetlands #: 91-NT-1179
Project: Woods Landing
County: Anne Arundel
Contact Person: Aaron M. Keel
Ph: (301) 974-3841

Dear Mr. Ratcliff:

The Nontidal Wetlands Division of the Water Resources Administration has completed review of your application for an activity in a nontidal wetland or buffer. Your proposed activity is being conducted in the Chesapeake Bay Critical Area and is therefore exempt from the permit requirements of the State Nontidal Wetlands Protection Act.

Please note that while your project may be exempt from the nontidal wetland permit process, other State and federal approvals may be necessary. Your application has been forwarded to the Tidal Wetlands Division, the Waterway Permits Division and the U.S. Army Corps of Engineers. You will be notified directly by them if their approval is needed for your project.

The Water Resources Administration has established a Permits Service Center to track both State and federal applications for activities in wetlands and waterways. Should you have any questions regarding the status of your application, you may call

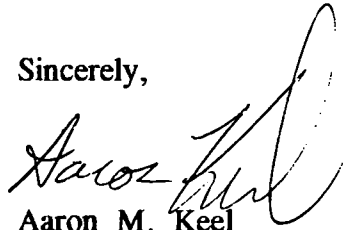
Telephone: (301) 974-3841

DNR TTY for the Deaf: 301-974-3683

Philip E. Ratcliff
December 4, 1991
Page 2 of 2

our Permits Service Center at 1-800-876-0200 (toll free) between the hours of 8:30 am and 4:30 pm Monday through Friday. Please have your application tracking number available when you call.

Sincerely,



Aaron M. Keel
Project Manager
Nontidal Wetlands Division

cc: U.S. Army Corps of Engineers, David Olsen
Maryland Department of the Environment, Janet Neundorfer
Enforcement Division (including map)
McCarthy & Associates, Inc, Jim Irre
~~Critical Area Commission~~
Denise Clearwater

INTRODUCTION

This report is prepared to satisfy the Anne Arundel County Office of Planning and Zoning Critical Area requirements as promulgated in the Chesapeake Bay Critical Area Legislation and the County Zoning Ordinance. The County is required to make findings that the project proposed is in conformance with County and State critical area requirements prior to project approval. This report will satisfy the Anne Arundel County Narrative requirements for their findings, as described in their memorandum entitled Information Needed for Critical Area Project Submittal.

PROJECT LOCATION

The site is broken into two parcels, and is located on Woods Landing Drive, in Cape St. Claire, Maryland (Figure 1). The site is bordered on the north by the Little Magothy River, the south by Revell Downs, and the east by the completed portion of Woods Landing (Section I).

PROJECT DESCRIPTION

The property is divided, as stated above, into two parcels which comprise approximately 24.13 acres and 7.03 acres, for a total of 31.16 acres +\-. Both parcels (i.e.- the entire site) lie within the Chesapeake Bay Critical Area. The property is currently undeveloped and consists primarily of forest cover, with some open grassy areas located on the smaller parcel. The completed portion of Woods Landing (Section I) consists of at least 13 cluster townhome buildings on the north side of Woods Landing Drive. The two undeveloped parcels (Section II) are slated to receive up to 153 cluster townhome units. The areas to be disturbed are forested, but contain no non-tidal or tidal wetlands.

EXISTING LAND USE

Section II of this subdivision is zoned R-5 and O-S, and is currently forested over approximately 95% of the site area. The existing open space, located on the smaller parcel, is two grassed areas, one of which is a fenced storage area for cars and boat trailers.

NATURAL HERITAGE AREAS

After consultation with Nancy Matthews, of the Anne Arundel County Office of Planning and Zoning, it has been determined that there are no natural heritage areas associated with this site.

NON-TIDAL WETLANDS

There are no non-tidal wetlands located in the proposed development areas. There are, however, non-tidal wetlands located on the smaller parcel and the southwest corner of the larger parcel. These areas will not be impacted by development.

TIDAL WETLANDS

The tidal wetlands boundary exists around the perimeter of the site bordered by the Little Magothy River, and the tidal marsh to the east. These areas will not be impacted, and will be protected by a 50 foot buffer. The buffer, less than the normal 100 foot required buffer, is acceptable to the county. This is due to previous plat approval, and compliance "in-so-far as possible" with current critical area guidelines.

SUBMERGED VASCULAR PLANTS

Review of the 1985 and 1986 submerged vascular plant maps by Orth et al. in Distribution of Submerged Aquatic Vegetation in the Chesapeake Bay and Tributaries indicates no submerged plant species in the project vicinity. Site visits in November 1991 did not reveal the presence of any submerged aquatic vegetation, in the Little Magothy River, near the project site.

SHELLFISH

According to the Oyster bar maps for the Chesapeake Bay and Little Magothy River (Figure 2), Natural Oyster Bar (N.O.B.) 4-3 exists at the mouth of the Little Magothy River. This N.O.B. is approximately 0.8-0.9 miles from the nearest point on the site. Stormwater management on site is providing for quality treatment using infiltration and attenuation. This type of treatment is expected to prevent any adverse impacts to the oyster bar.

STORMWATER MANAGEMENT

Stormwater management on site will be handled by infiltration and attenuation devices which will provide quality treatment before the runoff is released into the watershed. In case of backup in the system the overflow will be directed to outfall pipes and be released into the watershed.

PLANT COMMUNITIES

The vegetative composition over the whole site is relatively consistent, but some significant differences in the shrub layer, and physical location of the smaller parcel, made it necessary to break the site into five (5) parcels (Figure 3). The vegetatively, and topographically, distinct differences are described below. The complete list of species observed in each area is compiled in Table 1.

AREA 1 - South and Central Portions of the Larger Tract

This portion of the larger parcel is dominated by Yellow poplar (Liriodendron tulipifera) in the canopy, with some Red oak (Quercus rubra), White oak (Quercus alba), and Chestnut oak (Quercus prinus). The understory is dominated by Flowering dogwood (Cornus florida) and holly (Ilex opaca), along with young members of the canopy species. The shrub and vine layer is dominated by English ivy (Hedera helix), Japanese honeysuckle (Lonicera japonica) and Black cherry (Prunus serotina), along with a variety of other species. The herbaceous layer is very sparse, but is dominated by Christmas fern (Polystichum acrostichoides). Other herbaceous species were noted, but none of these were seen in any quantities.

Topography in the southern portion of this area drains to the south/southwest into a shallow swale that empties into the Little Magothy River.

AREA 2 - Northwest Corner of Larger Tract

The canopy in this area is a typical oak/hickory association found in upland hardwood forests. Four (4) species of oak are found here and one species of hickory (Table 4). Also found were some scattered Virginia pine (Pinus virginiana), Sassafras (Sassafras albidum), and Yellow poplar (Liriodendron tulipifera). The understory here is dominated by a thick layer of Mountain laurel (Kalmia latifolia) and holly (Ilex opaca), with scattered dogwood, cedar, and maple. The shrub and vine layers are dominated by Low blueberry (Viburnum angustifolia) and the greenbriers (Smilax rotundifolia, Smilax glauca) in the open areas. The herbaceous layer is dominated by Crane fly orchid (Tipularia discolor) and other widely scattered species.

Topography in this area contains very steep slopes along the river. From the top of the steep slopes the topography drops towards the southeast, and areas 1 and 3.

AREA 3 - Eastern Side of Larger Tract

The canopy in this area is about an equal mix of White, Red, and Chestnut oak, Mockernut hickory, and Yellow poplar. The understory is dominated by Flowering dogwood (Cornus florida) and Black cherry (Prunus serotina). The shrub and vine layer in this area is more developed and is dominated by Blackberry (Rubus allegheniensis), Japanese honeysuckle (Lonicera japonica), and English ivy (Hedera helix). Also found was scattered Carrion flower (Smilax herbacea). The herbaceous layer is rather sparse, but appears to be dominated by Christmas fern (Polystichum acrostichoides) and Wild licorice (Galium circaezans).

Topography in this area continues to slope towards the southeast, and the tidal marsh.

AREA 4 - Western Portion of Smaller Tract

The canopy in this area is dominated by Yellow poplar (Liriodendron tulipifera) and Sweetgum (Liquidambar styraciflua), with scattered oaks, hickories, and cherries. The understory is dominated by Flowering dogwood (Cornus florida), with Black cherry (Prunus serotina) and Sassafras (Sassafras albidum) scattered about. The shrub and vine layer is dominated by Multiflora rose (Rosa multiflora), blackberry (Rubus allegheniensis), raspberry (Rubus idaeus), and Poison ivy (Toxicodendron radicans). The herbaceous layer is dominated by several species which include Wild onion (Allium canadense), Enchanters nightshade (Circaea quadrisulcata), and Wild licorice (Galium circaezans).

Topography in this area consists of a peak running north/south with low spots on the east and west. The eastern low spot contains a drainage channel and some non-tidal wetlands.

AREA 5 - Eastern Portion of Smaller Tract

This area contains open grassy space, scrub/shrub and some mature canopy species. The tree species in the wooded portion are dominated by Black locust (Robinia pseudoacacia) about 5-10 years old, with some Black cherry (Prunus serotina). The shrub layer is dominated by blackberry (Rubus allegheniensis) and Multiflora rose (Rosa multiflora), with some Sweet gum (Liquidambar styraciflua) present. The herbaceous layer is dominated by Rough-stemmed goldenrod (Solidago rugosa) and pokeweed (Phytolacca americana), with other solitary species members.

Topography in this area is flat, so any rainwater percolates directly into the soil.

POLLUTANTS

The only pollutants contained in runoff might be from lawn and garden fertilizers or automobile fluids. These substances should be handled by the proposed stormwater management, and should not pose a concentrated threat to the watershed.

MITIGATION

The only mitigation that may be required is woodland replacement of disturbed areas. This may be done on or off site or if no sites are available, a fee based on square footage of disturbance will be assessed.

BUFFER MANAGEMENT PLAN

A minimum 50 foot buffer to tidal and non-tidal wetlands will be maintained per previous agreement with local agencies. This is in conflict with a typical 100 foot buffer, but arises as a result of the lots being platted prior to institution of the Critical Area Regulations. It is compliance in-so-far as possible.

Steep slopes should not be disturbed because they are all within the 50 foot buffer.

CALCULATIONS

The amount of woodland disturbance required for this project will be 738,000 square feet (16.9 acres), and will amount to approximately 53 percent of the total wooded area. The amount of impervious area to be installed will be 374,588 square feet (8.6 acres), and will amount to approximately 25 percent of the total site area. Again, this is compliance in-so-far as possible with current regulations based on platting of the lots prior to institution of the Critical Area Regulations.

Disturbance

impervious area

CONSULTANTS DATES OF WORK

Report Prepared By: James E. Irre
McCarthy and Associates, Inc.
14458 Old Mill Road, Suite #201
Upper Marlboro, Maryland 20772

Dates of Field Work: November 7, 8, and 12, 1991

Consultant: James E. Irre

Table 1

Vegetative Species Observed At
Woods Landing, Section II
Anne Arundel County, Maryland

Area 1 - South and Central Portion of Larger Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
A. <u>Canopy</u>		
Mockernut Hickory	<u>Carya tomentosa</u>	UPL
Yellow Poplar	<u>Liriodendron tulipifera</u>	FACU
White Oak	<u>Quercus alba</u>	FACU
Southern Red Oak	<u>Quercus falcata</u>	FACU
Northern Red Oak	<u>Quercus rubra</u>	FACU
B. <u>Understory</u>		
Red Maple	<u>Acer rubrum</u>	FAC
Flowering Dogwood	<u>Cornus florida</u>	FACU
American Holly	<u>Ilex opaca</u>	FACU
Black Cherry	<u>Prunus serotina</u>	FACU
C. <u>Shrub and Vine</u>		
Flowering Dogwood	<u>Cornus florida</u>	FACU
American Beech	<u>Fagus grandifolia</u>	FACU
English Ivy	<u>Hedera helix</u>	FACU
American Holly	<u>Ilex opaca</u>	FACU
Privet	<u>Ligustrum vulgare</u>	FACU
Japanese Honeysuckle	<u>Lonicera japonica</u>	FAC-
Black Cherry	<u>Prunus serotina</u>	FACU
Multiflora Rose	<u>Rosa multiflora</u>	FACU
Glaucous Greenbrier	<u>Smilax glauca</u>	FACU
Greenbrier	<u>Smilax rotundifolia</u>	FAC
Poison Ivy	<u>Toxicodendron radicans</u>	FAC
Northern Arrowwood	<u>Viburnum recognitum</u>	FACW
D. <u>Herbaceous</u>		
Tall Hairy Agrimony	<u>Agrimonia gryposepala</u>	FACU
Wild Onion	<u>Allium canadense</u>	FACU
Bushy aster	<u>Aster dumosus</u>	FAC
Cutleaf Grape Fern	<u>Botrychium dissectum</u>	FAC
Rattlesnake Fern	<u>Botrychium virginianum</u>	FACU
Christmas Fern	<u>Polystichum acrostichoides</u>	FACU
Roughstem goldenrod	<u>Solidago rugosa</u>	FAC

Area 2 - Northwest Corner of Larger Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
A. <u>Canopy</u>		
Mockernut Hickory	<u>Carya tomentosa</u>	UPL
Yellow Poplar	<u>Liriodendron tulipifera</u>	FACU
Virginia Pine	<u>Pinus virginiana</u>	UPL
White Oak	<u>Quercus alba</u>	FACU
Southern Red Oak	<u>Quercus falcata</u>	FACU
Chestnut Oak	<u>Quercus prinus</u>	UPL
Northern Red Oak	<u>Quercus rubra</u>	FACU
Sassafras	<u>Sassafras albidum</u>	FACU
B. <u>Understory</u>		
Red Maple	<u>Acer rubrum</u>	FAC
Flowering Dogwood	<u>Cornus florida</u>	FACU
American Holly	<u>Ilex opaca</u>	FACU
Red Cedar	<u>Juniperus virginiana</u>	FACU
Mt. Laurel	<u>Kalmia latifolia</u>	FACU
C. <u>Shrub and Vine</u>		
American Beech	<u>Fagus grandifolia</u>	FACU
Japanese Honeysuckle	<u>Lonicera japonica</u>	FAC-
Glaucous Greenbrier	<u>Smilax glauca</u>	FACU
Greenbrier	<u>Smilax rotundifolia</u>	FAC
Low Blueberry	<u>Viburnum angustifolium</u>	FACU
Highbush Blueberry	<u>Vaccinium corymbosum</u>	FACW
D. <u>Herbaceous</u>		
Wild Onion	<u>Allium canadense</u>	FACU
Wild Licorice	<u>Galium circaezans</u>	UPL
Teaberry	<u>Gaultheria procumbens</u>	FACU
Bracken Fern	<u>Pteridium aquilinum</u>	FACU
Crane-fly Orchid	<u>Tipularia discolor</u>	FACU

Area 3 - Eastern Side of Larger Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
A. <u>Canopy</u>		
Mockernut Hickory	<u>Carya tomentosa</u>	UPL
Yellow Poplar	<u>Liriodendron tulipifera</u>	FACU
Southern Red Oak	<u>Quercus falcata</u>	FACU
Chestnut Oak	<u>Quercus prinus</u>	UPL
Northern Red Oak	<u>Quercus rubra</u>	FACU
B. <u>Understory</u>		
Flowering Dogwood	<u>Cornus florida</u>	FACU
Black Cherry	<u>Prunus serotina</u>	FACU
Sassafras	<u>Sassafras albidum</u>	FACU
C. <u>Shrub and Vine</u>		
Red Maple	<u>Acer rubrum</u>	FAC
Strawberry Bush	<u>Euonymus americanus</u>	FAC
English Ivy	<u>Hedera helix</u>	FACU
American Holly	<u>Ilex opaca</u>	FACU
Spicebush	<u>Lindera benzoin</u>	FACW
Japanese Honeysuckle	<u>Lonicera japonica</u>	FAC-
Virginia Creeper	<u>Parthenocissus quinquefolia</u>	FACU
White Pine	<u>Pinus strobus</u>	FACU
Staghorn Sumac	<u>Rhus typhina</u>	UPL
Black Locust	<u>Robinia pseudoacacia</u>	FACU
Multiflora Rose	<u>Rosa multiflora</u>	FACU
Allegheny Blackberry	<u>Rubus allegheniensis</u>	FACU
Red Raspberry	<u>Rubus idaeus</u>	UPL
Elderberry	<u>Sambucus canadensis</u>	FACW
Greenbrier	<u>Smilax rotundifolia</u>	FAC
Poison Ivy	<u>Toxicodendron radicans</u>	FAC

D. Herbaceous

Tall Hairy Agrimony	<u>Agrimonia gryposepala</u>	FACU
Wild licorice	<u>Galium circaezans</u>	UPL
Christmas Fern	<u>Polystichum acrostichoides</u>	FACU
Roughstem goldenrod	<u>Solidago rugosa</u>	FAC

Area 4 - Western Portion of Smaller Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
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A. Canopy

Mockernut Hickory	<u>Carya tomentosa</u>	UPL
Sweet Gum	<u>Liquidambar styraciflua</u>	FAC
Yellow Poplar	<u>Liriodendron tulipifera</u>	FACU
Black Cherry	<u>Prunus serotina</u>	FACU
Southern Red Oak	<u>Quercus falcata</u>	FACU
Northern Red Oak	<u>Quercus rubra</u>	FACU

B. Understory

Flowering Dogwood	<u>Cornus florida</u>	FACU
Black Cherry	<u>Prunus serotina</u>	FACU
Sassafras	<u>Sassafras albidum</u>	FACU

C. Shrub and Vine

Devil's club	<u>Aralia spinosa</u>	FAC
Strawberry Bush	<u>Euonymus americanus</u>	FAC
Japanese Honeysuckle	<u>Lonicera japonica</u>	FAC-
Smooth Sumac	<u>Rhus glabra</u>	UPL
Blackberry	<u>Rubus allegheniensis</u>	FACU
Black Willow	<u>Salix nigra</u>	FACW

D. Herbaceous

Red Maple	<u>Acer rubrum</u>	FAC
Wild Onion	<u>Allium canadense</u>	FACU
Cutleaf Grape Fern	<u>Botrychium dissectum</u>	FACU
Enchantens nightshade	<u>Circaea quadrisulcata</u>	UPL
Hairy bedstraw	<u>Galium pilosum</u>	UPL
Sweet-scent Bedstraw	<u>Galium triflorum</u>	FACU
English Ivy	<u>Hedera helix</u>	FACU
American Holly	<u>Ilex opaca</u>	FACU
Jewelweed	<u>Impatiens capensis</u>	FACW
Privet	<u>Ligustrum vulgare</u>	FACU
Spicebush	<u>Lindera benzoin</u>	FACW
Downy lobelia	<u>Lobelia puberula</u>	FACW
Virginia Creeper	<u>Parthenocissus quinquefolia</u>	FACU
Christmas Fern	<u>Polystichum acrostichoides</u>	FACU
Glaucous Greenbrier	<u>Smilax glauca</u>	FACU
Carriion flower	<u>Smilax herbacea</u>	FAC
Greenbrier	<u>Smilax rotundifolia</u>	FAC
Bog goldenrod	<u>Solidago uliginosa</u>	OBL

Area 5 - Eastern Portion of Smaller Tract

<u>Common Name</u>	<u>Scientific Name</u>	<u>Indicator</u>
A. <u>Canopy</u>		
White Pine	<u>Pinus strobus</u>	FACU
Sweet Cherry	<u>Prunus avium</u>	UPL
Black Locust	<u>Robinia pseudoacacia</u>	FACU
B. <u>Shrub and Vine</u>		
Sweet Gum	<u>Liquidambar styraciflua</u>	FAC
Black Cherry	<u>Prunus serotina</u>	FACU
Multiflora Rose	<u>Rosa multiflora</u>	FACU
Allegheny Blackberry	<u>Rubus allegheniensis</u>	FACU
C. <u>Herbaceous</u>		
Panicled aster	<u>Aster simplex</u>	FACW
Lanceleaf goldenrod	<u>Euthamia graminifolia</u>	FAC
Fescue	<u>Festuca sp.</u>	----
Pokeweed	<u>Phytolacca americana</u>	FACU
Roughstem goldenrod	<u>Solidago rugosa</u>	FAC

ANNE ARUNDEL COUNTY

Annapolis, Maryland

INTER-OFFICE CORRESPONDENCE

November 25, 1991

RECEIVED

DEC 10 1991

DNR

CRITICAL AREA COMMISSION

TO: Frank Ward

FROM: Penny Chalkley

SUBJECT: WOODS LANDING II

Part of this site was documented by DNR as an Upland Natural Area (UNA). This would have included portions around Woods Landing I and the woodland portions of Woods Landing I. The write-up for this stated:

This site of 55 acres consists of a mature hardwood forest bordering tidal marshes on the Little Magothy River. Portions of the forest have been clear-cut and here old field vegetation predominates. The forest is canopied by tulip poplar, red maple, and sweet gum with DBH's of 12 to 18 inches. The understory is composed of the canopy species plus holly. Shrubs include holly, dogwood, spicebush and winterberry. The herb layer is dense and is dominated by honeysuckle. This site provides wintering habitat for a variety of birds, including woodcock which also breeds here.

There was no documentation of rare or endangered species, and this was one of a number of forested sites included in the UNA.

Bill Gates, who was the Wildlife Biologist assigned to review projects in this county, has no concerns regarding this project. DNR did not require a breeding bird survey.

According to the county's adopted Critical Area Program, projects on the sewer allocation list are exempt from 49-88. It was exempt from 42-86 and 90-86, having gone through Sketch prior to Critical Area.

Therefore, any criteria imposed are insofar as possible regarding compliance.

The site is totally wooded in the larger portion, and woodland and grassland on the smaller part.

There are no heritage areas documented by DNR or by the consultant as a result of field work.

Memo
Frank Ward
November 25, 1991
Page 2

The consultant's analysis is more detailed than that done by DNR whereby he has identified seven different communities:

- yellow poplar dominated forest
- oak/hickory association
- oak/hickory and yellow poplar mix
- yellow poplar and sweet gum dominated with a drainage channel and nontidal wetland
- grassy area, shrub/scrub and some canopy trees
- tidal wetlands
- nontidal wetlands

Any boat oriented development of the community pier is not grandfathered. A fishing pier is acceptable providing there is no dredging of shallow water habitat.

Obviously any alternation of the existing vegetative communities will have an impact on animal and bird usage, temperature modification and generation of increased runoff including some sediment transport. However, the project is permitted as proposed under our program. They have improved the plan since the original submittal in 1983 by pulling units off steep slopes, avoiding wetlands, utilizing stormwater management, and identifying large trees. They will have to account for reforestation. They have provided a Conservation Easement along the slope/shoreline so no individual piers can be permitted. They need a wetlands license from DNR.

PC/bw

WOODSLAN/ESPPCH11

LAW OFFICES

MILES & STOCKBRIDGE

10 LIGHT STREET
BALTIMORE, MARYLAND 21202

101 BAY STREET
EASTON, MARYLAND 21601

30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

300 ACADEMY STREET
CAMBRIDGE, MARYLAND 21613

TELEPHONE 410-822-5280
FAX 410-822-5450

22 WEST JEFFERSON STREET
ROCKVILLE, MARYLAND 20850

11350 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030

600 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

1450 G STREET, N.W.
WASHINGTON, D.C. 20005

JOHN H. MURRAY

September 22, 1992

Anne Arundel County
Board of Appeals
Arundel Center, Room 102
44 Calvert Street
Annapolis, MD 21401

Re: Woods Landing No. 2 Subdivision
Case No. BA 10-92A

Dear Board Members:

Counsel for the Applicant makes an argument never previously advanced in this proceeding in his letter dated September 16, 1992. In order to prevent this sandbagging tactic from having its intended result, Woods Landing Community Association files this brief response.

In approving Woods Landing No. 2, the Planning and Zoning Officer purportedly relied on Anne Arundel County Critical Area Program, "Grandfathering", at p. 17 (a copy of which is attached hereto as Exhibit A), which states:

Subdivisions on the sewer allocation list have also been grandfathered since final plans were submitted and approved prior to the adoption of the Critical Area Criteria. (emphasis added).

Further, the words "exemption" and "grandfathering" are used interchangeably within the grandfathering provision of the local Program to mean the same thing. See Exhibit A. The Applicant's argument that Woods Landing No. 2 was exempted rather than grandfathered is, under the local Program, a distinction without a difference.

COMAR 14.15.09.01.C(8), which the Applicant claims completely "exempts" Woods Landing No. 2 from all Critical Area laws and regulations, only permits exemption of certain Critical Area land that a local jurisdiction has expressly requested the Commission to exempt (a copy of COMAR 14.15.09.01.C(8) is

Anne Arundel County
Board of Appeals
September 22, 1992
Page 2

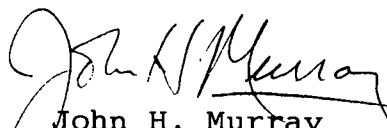
MILES & STOCKBRIDGE

attached hereto as Exhibit B). Throughout these proceedings, neither the Applicant nor the County has ever alleged that the County requested the Commission to exempt the area proposed for development of Woods Landing No. 2 from buffer requirements pursuant to this Regulation. To have done this, Anne Arundel County would have submitted a detailed proposal to the Commission stating alternative measures for achieving water quality and habitat protection in the area purportedly exempted. See Exhibit B. Absolutely no evidence was ever introduced that the County undertook and accomplished this detailed exemption process. Reliance on this COMAR Regulation is misleading and completely unfounded.

Even if an exemption was requested and granted (which is not the case), §8-1803.3 of the Annotated Code of Maryland, Natural Resources, still requires a fifteen percent (15%) impervious surface maximum. The plan for Woods Landing No. 2 also violates this state statute, which is not exempted by the Regulation.

Additionally, the Critical Area Commission has taken the position that there is a conflict between the Anne Arundel County Critical Area Program and the Chesapeake Bay Critical Area Protection Program and Regulations. See Exhibit Nos. 12-15, attached to Appellant's Closing Argument. The Applicant and County lack all credibility by claiming that no such conflict exists.

Sincerely,


John H. Murray

JHM:jhf

Enclosures

w1\jhmw101.ltr

cc: Jamie Beth Baer, Esquire
Harry C. Blumenthal, Esquire

bcc: Betsy Kulle
Charles Frank

1. Land that met the density requirement and met the water and sewer criteria remained LDA.
2. Land with approved subdivision activity with recorded platted lots remained LDA.
3. Land with environmentally sensitive features along perennial and tributary streams were reviewed and an approximately 300 feet buffer along these streams, including adjacent wetlands, went back to RCA. The few areas of Critical State Concern that were classified as LDA had increased portions going to RCA.
4. Land that involved citizens' requests for land use classification changes was reviewed and either remained LDA or went back to RCA.

As of November maps, Anne Arundel County still had 2829.38 acres that changed to LDA because of water and sewer.

2829	
-728	Land use/existing sewer and water service - stays LDA
2101	
-566	Subdivision activity - stays LDA
1535	
-673	Buffer protection - goes back RCA
862	Still in LDA strictly from water and sewer changes

These changes have resulted in proposed acreage computations as follows:

	Jan.	Sept.	Nov.	Current Proposed
RCA	23699	21163	22031	22807
LDA	17411	22453	21613	20929
IDA	5580	5229	5215	5133
TOTALS	46690	48846	48859	48869

Grandfathering

Section 14.15.02.07 of the Critical Area Criteria contain provisions for grandfathering development under certain conditions. These provisions have been administered in Anne Arundel County in the following manner. All development in the Critical Area approved after December 1, 1985, under a building permit for land that was not otherwise subject to compliance with the Critical Area Criteria has been exempted from the Criteria. Major subdivisions, minor subdivisions, rezonings, variances and special exceptions which were submitted before April 21, 1986 (the effective date of Bill 42-86) were

exempted from the Criteria. Minor subdivisions creating one new lot were also exempted if the submittal was made before December 31, 1986. Subdivisions on the sewer allocation list have also been grandfathered since final plans were submitted and approved prior to the adoption of the Critical Area Criteria.

- Building permit applications submitted after adoption of the County's Critical Area Program for developments that have not been approved in compliance with the Criteria will be reviewed to comply with the adopted requirements insofar as possible. A submittal package has been developed for reviewing building permits and is included as a part of the appendices. The County's procedures will require that all building permit applications for riparian property and building permit applications for projects needing a grading permit submit the information requested in the submittal package and will be required to meet the Criteria to the extent possible determined by the Office of Planning and Zoning. Nonresidential building permits irrespective of location or size within the Critical Area will also be required to meet the criteria to the same extent.

All applications for major subdivision, minor subdivision creating more than one lot, rezoning, and special exception submitted after April 21, 1986, have been required to comply with the Criteria. All minor subdivision applications submitted after December 31, 1986, have been required to comply with the Criteria. Additionally, all grading permit applications must comply with the Criteria after program approval.

Growth Allocation

Growth allocation will be used on a case by case basis approved by County Council with the approval of the Critical Area Commission. Once every six months, until all of the growth allocation is used, the available growth supply will be assessed and a decision made whether or not to apply growth allocation to any projects. The following guidelines will be used in assigning growth allocation.

New Intensely Developed Areas shall be located in Limited Development Areas or adjacent to existing Intensely Developed Areas, and new Limited Development Areas shall be located adjacent to existing Limited Development Areas or Intensely Developed Areas. New Intensely Developed and Limited Development Areas shall be located to minimize impacts to habitat protection areas, shall optimize benefits to water quality, and shall minimize impacts to the defined land uses of the Resource Conservation Area. When new Intensely Developed or Limited Development Areas are developed in Resource Conservation Areas, under the allocation formula, they shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

Projects with public benefits for the residents of Anne Arundel County will be favored in the application of growth allocation.



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MAR 23 1992

DNR
CRITICAL AREA COMMISSION

Anne

William Donald Schaefer
Governor

Maryland Department of Natural Resources

Resource Conservation Service

P.O. Box 68
Main Street
Wye Mills, Maryland 21679

Torrey C. Brown, M.D.
Secretary

Donald E. MacLauchlan
Assistant Secretary

March 18, 1992

Ms. Penny Chalkley
Planning and Zoning
Anne Arundel County
Box 6675
Annapolis, MD 21404

Dear Ms. Chalkley:

We do not consider the site of the proposed Woods Landing II subdivision (Tax map 40, parcel 163) to be potential Forest Interior Breeding Bird habitat. The site is too small and isolated by surrounding development to require a survey or conservation measures.

Please contact Glenn Therres or me at (301) 827-8612 should you have any questions or concerns.

Sincerely,

William R. Gates

William R. Gates
Bay Wildlife Biologist

cc: G. Therres
Dr. S. Taylor

Telephone: _____

DNR TTY for the Deaf: 301-974-3683



JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



WESTERN SHORE OFFICE
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

February 6, 1992

Mr. Michael Hoffman
Chairman
Anne Arundel Group of the
Sierra Club
P O Box 3620
Annapolis, Maryland 21403

Dear Mr. Hoffman:


We received your letter regarding Anne Arundel County's approval of the Woods Landing II subdivision. We share your concerns with the deficiencies of the project regarding the 100-foot buffer, forest clearing, and density within the Limited Development Area, and have advised the County to apply these requirements fully. However, the language of Bill 49-88 1, the County's Critical Area Bill, exempts projects on the wastewater treatment allocation waiting list from the Bill and its requirements. The Woods Landing II subdivision falls in this category. The Critical Area Commission, whether or not they were aware of this language, approved the Bill as part of the County's Critical Area Program in June 1988. Because any action to overturn local decisions must be undertaken through the court system, it is difficult to file a workable appeal given the existing language. However, the situation with Woods Landing has triggered our concern over the grandfathering and exemption issues, and we are preparing to require changes to the County's approved Program. We expect that the issues, including the exemption for projects on the wastewater treatment allocation waiting list, will be on the agenda of the Commission meeting on March 4th 1992. This may not satisfactorily address your concerns about Woods Landing, but please be assured that we are trying to have the County's Critical Area Program modified so that it can fully implement the letter and the spirit of the Critical Area Law and Regulations.



Mr. Hoffman
February 6, 1992
Page Two

Thank you for your concern on this important issue. If you have further questions, please contact Ms. Anne Hairston on my staff.

Very truly yours,



John C. North, II
Chairman

JCN/ABH/jjd

cc: George E. H. Gay, Esq.
Dr. Sarah Taylor
Ms. Anne Hairston

McCARTHY & ASSOCIATES, INC.

REGULATORY and ENVIRONMENTAL CONSULTANTS

Amendment To Critical Area Report For Woods Landing Section II Anne Arundel County, Maryland

Non-Tidal Wetlands

The first of the two non-tidal wetlands on the large parcel, located in the southwest corner of the site, changes from a tidal wetland to a non-tidal wetland with a small transitional area between. The second area, located in the northeast corner is quite a bit smaller. Hydrology in these areas is provided by stormwater runoff and a seasonally high water table. Additional hydrology may be provided during abnormal tidal surges as overwash from the tidal zone.

The soil survey for this portion of Anne arundel County (Figure 4) indicates the presence of four (4) different soil series on site (Table 2). Three of the four are considered hydric by the USDA, Soil Conservation Service. Soil samples taken in the wetland areas revealed chromas of two (2) with rust-colored mottles, and chromas of zero (0) with no mottles. The latter could be classified as a mucky/peat. Soil samples were compared to the Munsell Soil Color Chart for a color determination.

The small non-tidal wetland located on the smaller parcel consists of a stream channel between two stormdrain outfalls. Associated with the north end of this area is a flat vegetated area that gets hydrology from a seasonally high water table. Soil samples taken in this area revealed a dominant chroma of two (2) with dark rust mottles.

Table 3 contains a list of vegetative species found in each of these three areas.

JUDGE JOHN C. NORTH, II
CHAIRMAN
301-822-9047 OR 301-974-2418
301-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
301-974-2418/26
301-974-5338 FAX



WESTERN SHORE OFFICE
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

May 1, 1991

Ms. Penny Chalkley
Office of Planning and Zoning
Box 2700
Annapolis, MD 21404

Dear Penny:

I am writing regarding Subdivision 91-065, Woods Landing, Section II. You have informed us that the project is exempt from County Council Bill 49-88 because of its position on the wastewater allocation waiting list; however, under COMAR 14.15.02.07(2)(a), lots not individually owned should be consolidated or reconfigured to comply with the Critical Area Criteria insofar as possible. Additionally, the Habitat Protection Area provisions, including the required 100-foot buffer, and the water-dependent facilities provisions are not subject to grandfathering, and were meant to be applied to all future development. Because of these provisions, I want to encourage the developer to meet all Critical Area requirements insofar as possible, and to maintain the full 100-foot buffer to the shoreline and streams. Relevant Critical Area requirements include no disturbance in the 100-foot buffer, a limitation of 15% impervious surfaces for the overall subdivision, and a maximum of 20% forest clearing, with equal replacement of areas cleared.

Incorporating these requirements into the updated project design will be helpful in preserving the environmental amenities which are so important to homeowners' quality of life. The requirements such as buffers, minimizing impervious surfaces and maximizing forested areas ameliorate the negative impacts resulting from development, including localized flooding, deteriorated water quality and loss of important shoreline wildlife habitat.

Please call me if I can be of any assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Anne Hairston".

Anne Hairston
Natural Resources Planner

ABH
cc: Ren Serey
George Gay
AA156-91

GOVERNMENT STREET
FREDERICK, MARYLAND 21701
FAX 301-698-6450
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

JOHN H. MURRAY

July 31, 1991

Charles Frank, President
Woods Landing Community Association, Inc.
442 Crain's Roost Court
Annapolis, Maryland 21401

Re: Woods Landing II

Dear Mr. Frank:

This is to follow up on my letter dated July 29, 1991. I spoke with George Gay and Milt McCarthy on July 30, 1991. Mr. Gay was unwilling to express an opinion on how the Critical Area Commission would react to a proceeding in which the Community Association challenged the County's grandfathering provision and/or its application to Woods Landing II. He felt that the Commission would place some reliance on the recommendations of its staff. As we know, Ann Hairston of the Commission staff is uncomfortable with the position taken by the County.

Mr. McCarthy confirmed that he had done a limited environmental evaluation of the site based on instructions from the County that a full Critical Area assessment was not required due to grandfathering. Based on Mr. McCarthy's general comments, I have the impression that the site would not be found to contain endangered species or breeding grounds even if a full study were conducted. However, it cannot be known unless a full study is conducted.

Enclosed are copies of the draft letters I agreed to prepare and a copy of my transmittal letter to Tom Adkins.

At this time, I have completed my work under our agreement dated July 19, 1991. Accordingly, I have submitted our statement

February 28, 1992
Murray/ Woods Landing
Page three

~~With regard to stormwater management, we are of the opinion that the system proposed of infiltration and attenuation will not achieve the water quality goals for more than a few years. This subject is rather involved and the scope of our work does not permit more than this statement of an opinion. (Stated another way, given the system proposed, the potential of degrading the existing level of water quality in the Little Magothy River is greater than any expectation of remaining the same or improvement over the long term.)~~ The outfalls proposed do not feature any forebay protection to the down stream areas.

The one major flaw we see with Section 2 is density. The lowest density will exist on the least sensitive land area. Area 1 of the plat in the southwest portion of the site has a density of 4.4 units per acre. Area 2 in the northwest portion has a density of 7.4 units per acre. Area 3 in the eastern portion has a density of only 1.73 units per acre. Area 3 could easily support 30 units which could reduce the pressure of intense development on the two western areas.

There may be or were compelling circumstances which precluded locating units on Area 3 (designated recreation). In our opinion, the need for recreational land would not have been a good reason to increase the density in the wooded sections along the Little Magothy River. The amount of impervious and clearing could have been substantially reduced in Areas 1 and 2. Additionally, the area at Bayhead Road is already provided with infrastructure and is very lightly wooded with young pioneer species of trees (locust and cherry). This we believe was an unfortunate arrangement of density.

We would be remiss by not mentioning our impression of the first section of Woods Landing. This award winning development was implemented by an obviously conscientious developer. This development is possibly one of the best examples in the County of fitting the buildings into a steep site while preserving the mature woodland. If there were any way to assure that Section 2 would be done with the same sensitivity, we would not be so concerned with the development criteria except possible stormwater management.

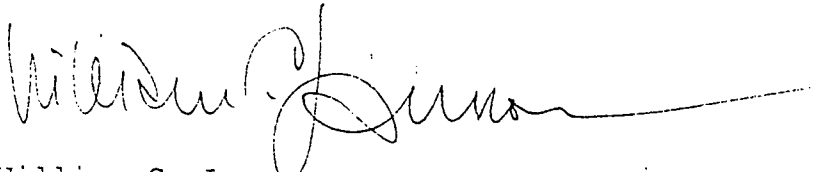
In summary, development of Section 2 ~~will have significant consequences to the existing environment most of which cannot be reversed over time. Our major concerns deal with where the location of density and our opinion that the stormwater management system proposed will not provide an adequate level of pollutant removal over time. This will result in water quality degradation that cannot be reversed without great expense. We believe that the developer could have done more to meet the concept of "in so far as possible" based upon this cursory examination.~~

February 28, 1992
Murray/ Woods Landing
Page four

Please give me a call to discuss the results of this review.

Very truly yours,

LANDTECH CORPORATION

A handwritten signature in dark ink, appearing to read 'William C. Lannem', with a long horizontal flourish extending to the right.

William C. Lannem

WCL:ww

cc: Charles Frank

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



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45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

April 15, 1992

The Honorable Anthony Lamartina
Anne Arundel County Board of Appeals
Arundel Center
PO Box 2700
Annapolis, MD 21404

Dear Chairman Lamartina:

I would like to comment on the Woods Landing Subdivision, Phase II. The subdivision apparently received sketch plan approval substantially prior to the passage of the Critical Area Law and the adoption of the County's Critical Area Program. Because of the lack of sewer capacity, the lots were prevented from being recorded by the County's adequate facilities ordinance and remained in common ownership, and the subdivision could not obtain final approval from the County, which otherwise may have occurred. The Critical Area Criteria address this type of situation (prior approved subdivisions) in COMAR 14.15.02.07.B(2)(a) by stating that lots not individually owned should be consolidated or reconfigured to comply with the Critical Area Program insofar as possible. COMAR 14.15.02.07.D further states that nothing in the grandfathering regulation may be interpreted as altering any requirements for development activities set out in COMAR 14.15.03 (Water-dependent Facilities regulations) and COMAR 14.15.09 (Habitat Protection Area regulations).

Consequently, applicable Habitat Protection Area regulations such as the 100-foot buffer to tidal waters, tidal wetlands, and tributary streams and the 25-foot buffer to nontidal wetlands should be applied to this project at a minimum. For other sections of the Criteria (e.g., Limited Development Area requirements), it should be demonstrated that requirements such as the 20% limit on forest clearing, steep slope protection, and stormwater management for the 2- and 10-year storm are met insofar as possible on the property. Where the development provides less than full compliance, the reasons for this should be explicitly stated.

Mr. Lamartina
April 15, 1992
Page Two

Additionally, impervious surfaces must be limited to 15% of the total area of the parcel. The estimate of impervious surfaces for the current proposal is 25% of the parcel. The Maryland General Assembly has altered the impervious surface regulations by State statute to allow residential lots 1/2 acre or less and nonresidential lots 1/4 acre or less to create up to 25% impervious surfaces on the lots (Natural Resources Article §8-1808.3). However, this statute retains the 15% impervious surfaces limitation for all other situations, such as subdivisions and larger lots, and has placed this requirement in State law, which preempts regulations and local ordinances. Individual lots within subdivisions approved after December 1, 1985 are allowed 25% impervious surfaces, but the overall subdivision, including roads and open space, must be limited to 15% impervious surfaces.

The Commission recommends providing the full 100-foot buffer to tidal waters, tidal wetlands, and tributary streams, 25-foot buffers to nontidal wetlands, and a limitation of 15% impervious surfaces at a minimum for the subdivision to be consistent with the State Critical Area Law.

Sincerely,



Anne Hairston
Natural Resources Planner

ABH

Mr. Lamartina
April 15, 1992
Page Two

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Sincerely,



Anne Hairston
Natural Resources Planner

ABH

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410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



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ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

April 29, 1992

Mrs. Ardath Cade
Planning and Zoning Officer
Office of Planning and Zoning
2664 Riva Road
Box 2700
Annapolis, MD 21404

Dear Mrs. Cade:

This letter and attachment describe changes which Chesapeake Bay Critical Area Commission staff have identified to assure that the County Program is consistent with the State Critical Area Criteria (COMAR 14.15) and the Critical Area Law (Natural Resources Article, §8-1801 et seq.). I hope that this information will be helpful to your staff as it undertakes the four-year Comprehensive Review of the County Critical Area Program. This letter follows up on earlier letters and meetings with you and your staff regarding possible changes to the County Program. We would like to meet further to discuss any or all of these issues, and would be happy to discuss any additional changes which the County would like to make to its Critical Area Program.

The Critical Area Commission approved the County Program in 1988 as complete and sufficient. However, subsequent examination and experience with implementation have revealed that some modifications are necessary if the County Program is to meet the intended goals of the Critical Area Law.

Commission staff consider several issues to be of particular importance in assuring that the County Program is implemented in a manner that meets the goals of the Critical Area Law: grandfathering language (referenced as Item 7 in the attached Assessment), environmental information for water-dependent facilities (Item 8), building permit review only on riparian lots (Item 21), and exemption of certain subdivisions from the County Critical Area ordinance (Item 22). These issues are discussed in further detail below, along with some of the other suggested changes.

Mrs. Cade
April 28, 1992
Page Two

All of the identified changes are outlined in the attached Assessment of Conformance. In a December 5, 1991 letter commenting on the draft version of the Assessment, Elaine Peiffer on your staff acknowledged that some of the items, identified in the attached Assessment as Items 1, 2, 3, 5, and 13, are considered necessary changes. The letter also indicates that County staff do not consider that the other items identify necessary changes. Evidently, there is a difference in interpretation or acceptance of the level of clarity in the ordinance language. Based on review by our Assistant Attorney General, Items 16, 17, and 20 have been added to the draft Assessment previously presented to your staff. Item 4 has also been added from the version previously discussed.

One issue, Item 6, concerns the appropriate types of uses in the Resource Conservation Area (RCA). When Critical Area mapping was initially undertaken, it was expected that existing zoning would be required to conform to RCA regulations, a designation based on existing uses as resource-dominated areas. Where overlay zones were used for the RCA, the zoning category was not changed as assumed. Substantial new commercial, industrial, or institutional uses were not envisioned by the language or intent of the RCA designation. While meeting the Limited Development Area (LDA) requirements such as limitation to 15% impervious surfaces and 20% forest clearing ameliorates some impacts of development, the RCA was not meant to be treated like the LDA for uses other than residential. If new commercial, industrial, or institutional uses are to be developed in accordance with underlying zoning, growth allocation should be applied to change the designation to LDA. While we understand that the County has limited amounts of growth allocation available because of use by interim developments, the current practice of allowing uses other than residential merely to comply with LDA rules essentially upgrades the property to LDA without the proper reduction in growth allocation. Expansion of existing non-residential uses is allowed, but the establishment of new uses conflicts with the basic intent of the Criteria, and the specific language in COMAR 14.15.02.05.C(5).

Item 7, omission of the full scope of grandfathering, is basic to the appropriate functioning of the Program. The Criteria provide flexibility for development on legal lots existing as of December 1, 1985, with the exception of two sections, COMAR 14.15.03, Water-dependent Facilities, and COMAR 14.15.09, Habitat Protection Areas. Deviations from these sections must be provided for by the other avenue for site-specific considerations, the variance procedure, which includes specific standards. Currently, this is not occurring in Anne Arundel County. Administrative variances could be considered, but all of the variance standards from COMAR 14.15.11 must be

Mrs. Cade
April 28, 1992
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Mrs. Cade
April 28, 1992
Page Three

applied and the Critical Area Commission staff should have an opportunity to review projects which propose development in the buffer, as is required by COMAR 14.20, the regulations on notification of project applications. The granting of a variance in the Critical Area should include any mitigation necessary to prevent adverse impacts to water quality and wildlife habitat. While the mandatory afforestation of at least 25 feet is a commendable provision in the County Program, it cannot be used to allow less than the protection mandated by the Criteria. Any problems potentially posed by the takings issue can be resolved through uniform application of a variance process. There is no legal justification for not meeting the minimum requirements of the Criteria, including the variance process. While the County may choose not to use Buffer Exemption Areas (BEAs) widely, the use of BEAs certainly allows the intent of the Critical Area Law to be carried out. BEAs do not exempt lots from meeting buffer requirements, as unfortunately implied by the name. They merely allow alternative provisions, a more flexible program, to be applied to meet the same goals, and require a determination that the existing buffer does not function as intended. Provisions contained in the County's modified buffer policy could certainly make up a portion of the buffer exemption program. However, application should be limited to identified areas where the buffer currently is not functioning as intended.

Item 8 is the omission of the information on environmental factors in applications for some types of water-dependent facilities, other than individual private piers. While these factors, such as flushing requirements, are listed in the County Program which is incorporated by reference in Bill 49-88, the ordinance language asks for the specific factors in some situations, and only for general "environmental impact" in others. The application of these standards to all situations becomes unclear and inconsistent because of the differences in submittal and approval requirements and the generality of language in these requirements. A landowner searching for submittal requirements is not clearly presented with the requirement for information, and this has been reflected in the lack of this information in some water-dependent facilities project expansions accepted by the County and sent to the Commission for review.

Item 9, requiring a single point of access in the buffer for community marinas, also is referenced as a requirement in program text, but is not carried out in the ordinance requirements for permit approval for community marinas. It should be included in ordinance language to clarify its applicability to proposed projects.

Mrs. Cade
April 28, 1992
Page Four

Items 10, 11, and 12 also request clarification in the ordinance language for water-dependent facilities such as public beaches, research and education facilities, and fisheries facilities. The ordinance is basically silent, and it may be that the Program, by being more specific, could be thought to control. However, zoning ordinances typically prohibit uses not specifically approved for a zone, which would prevent the uses from occurring with the specified provisions, and it does not incorporate the relevant requirements for that use.

Item 14, adding the requirement for Soil Conservation and Water Quality (SCWQ) Plans to the ordinance, is needed to clarify this plan as a requirement and create a possible enforcement mechanism. The SCWQ Plan is the mechanism for implementing most of the agricultural requirements, so as long as it is clearly required in the zoning ordinance, the presence of the remainder of the agricultural element only in the appendices of the County's Critical Area Program (incorporated in Bill 49-88 by reference) should be sufficient to allow implementation and enforcement.

Item 15 concerns the omission of language on buffers for existing surface mining operations (e.g., sand and gravel mines). The County ordinance requires a 100-foot buffer for surface mining operations, but makes no reference to existing operations with intrusion already occurring in the buffer. While the language requiring a 100-foot buffer to the greatest extent possible for existing operations leaves substantial room for interpretation, it does raise an obligation to consider opportunities to establish a buffer if new or changed permits are needed.

Items 16 and 17 concern buffer expansion and exemption, respectively. The County ordinances require a 50 foot setback from the top of the slope for steep slopes adjacent to the buffer, which is entirely adequate in most circumstances. The Criteria require expansion for steep slopes adjacent to the buffer of 4 feet for every percent slope, which may result in a greater setback in some situations. The greater of the two setbacks should be able to be applied. Buffer Exemptions are provided for in Industrial Districts. The areas qualifying for Buffer Exemption, based on the buffer's current inability to function as intended by the Criteria, should be mapped to support the County's Buffer Exemption Program.

Item 18 concerns the omission of the tests for water-dependency or substantial economic impact for projects allowed to use the nontidal wetlands mitigation option. Although only the requirement for the 25-foot buffer to nontidal wetlands is included in the zoning and subdivision ordinances, the

Mrs. Cade
April 28, 1992
Page Four

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Mrs. Cade
April 28, 1992
Page Five

incorporation of the program by reference in Bill 49-88 should be sufficient to make the wetlands requirements in the program enforceable on applicable projects. Appendix G of the County Critical Area Program contains the procedural and substantive requirements for mitigation of nontidal wetlands disturbance, but incorporates only the tests that disturbance be unavoidable and necessary. The Criteria also require tests that the project in question be water-dependent or of substantial economic benefit. This should be included in the Appendix so that the County Program meets the minimum Criteria requirements. The County allowing selective tree-cutting in nontidal wetlands contradicts some existing State harvesting requirements (e.g., the MD Forestry Division's General Approval from the Critical Area Commission), so this built-in conflict should be eliminated.

Item 19 concerns the omission of protection requirements for a subset of Habitation Protection Areas, the non-forested HPAs. While the entire program is incorporated by reference, the exclusion of certain HPAs or protection zones in the ordinance suggests that these are not necessary for permit approval, as discussed above. HPAs should require protection whether forested or not.

Item 20 concerns standards for granting variances from Critical Area requirements. All of the findings identified in the Criteria should be applied for Critical Area variances, and the use of practical difficulties as a basis for granting a variance is not allowed in the Criteria. The "practical difficulties" basis represents different standards than "unwarranted hardship", which is permitted in the Criteria. The County ordinance currently allows either basis to be used for granting a variance.

Item 21, applying Critical Area review to all permits, is another issue fundamental to the viable functioning of the Critical Area Program. The failure to apply the Critical Area regulations to building permits for all but waterfront lots means that a substantial portion of the Critical Area is omitted from Program requirements. The distinction between waterfront and waterview lots has proved particularly troublesome because of the presence of the buffer on some "waterview" lots. The presence of a strip of community property only a few feet wide on the tax maps, which may in actuality be long eroded, has exempted certain landowners from Critical Area requirements and resulted in inequitable application of buffer regulations.

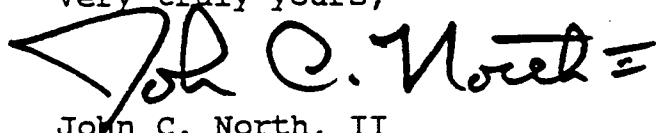
Item 22 concerns the exemption of subdivisions based on their presence on the wastewater treatment allocation waiting list. Such exemption was clearly not provided for within the Critical Area Law or Criteria. Subdivisions under common

Mrs. Cade
April 29, 1992
Page Six

ownership should be reconfigured to comply with the Critical Area Criteria insofar as possible, and the regulations for Habitat Protection Areas and Water-dependent Facilities should be fully applied. Although the County has developed policies for bringing these subdivisions into compliance insofar as possible, as intended by the Criteria, the language in Bill 49-88 appears to contradict this procedure.

I am sure you are aware of some of the problems stemming from discrepancies between the County's Critical Area Program and the Critical Area Law and Criteria. I hope that you will be able to utilize the Comprehensive Review process to correct the several problems discussed in this letter and render the County Program more clearly enforceable by the County staff. We will be glad to consider any additional changes which the County wishes to make as part of the Comprehensive Review. Please do not hesitate to call me to set up a meeting with Commission staff or the County review panel of Commission members.

Very truly yours,



John C. North, II
Chairman

JCN/abh

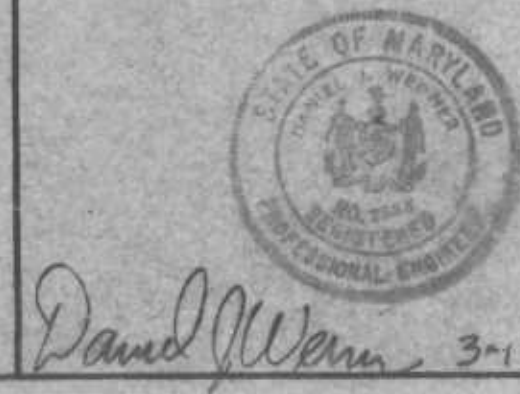
encl.

cc: Joe Elbrich
Elaine Peiffer
George Gay
Pat Pudelkewicz
Anne Hairston



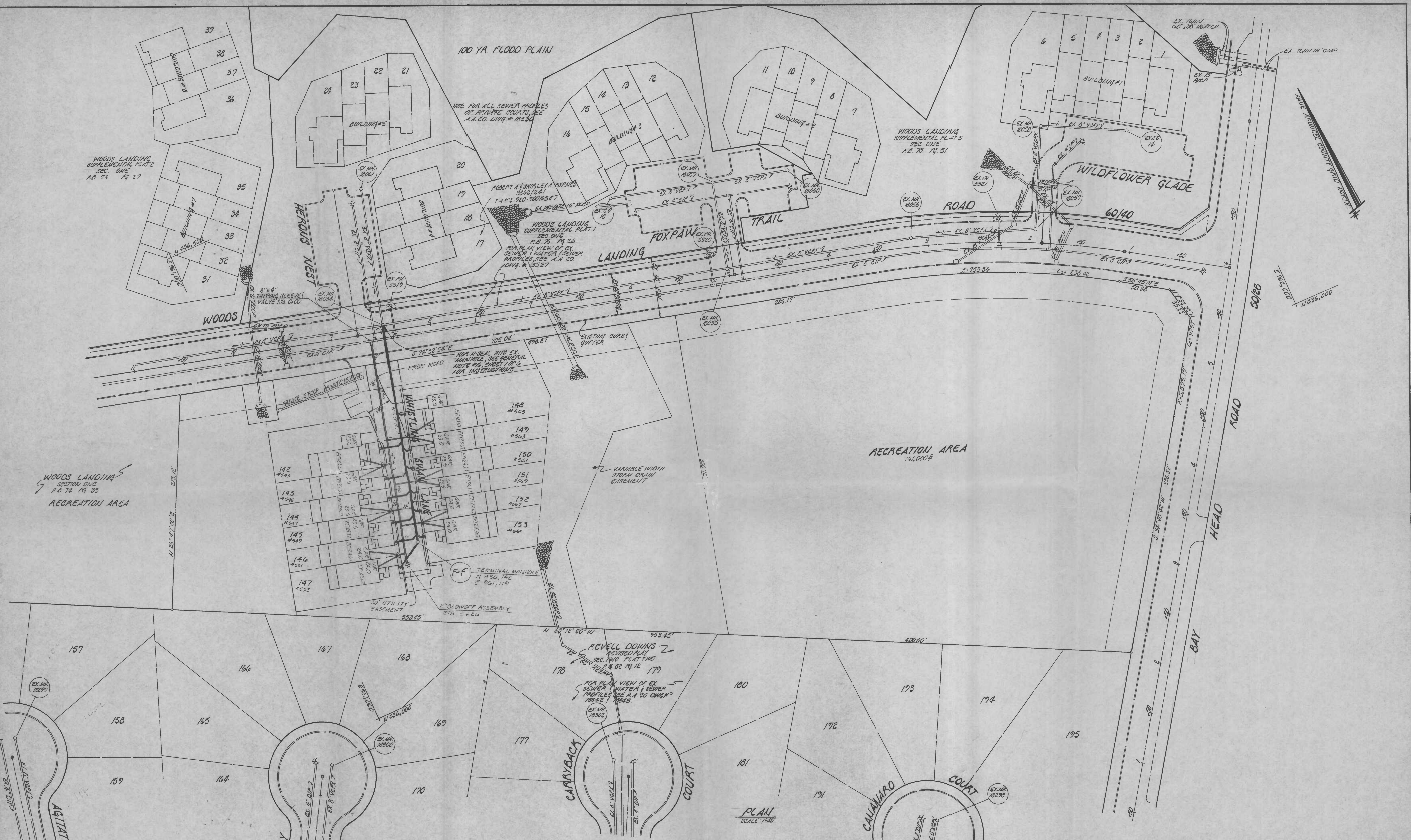
PLAN
SCALE: 1"=40'

ANAREX, INC.
ENGINEERS SURVEYORS
EXPEDITERS PLANNERS
303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE, MARYLAND 21108-9803
PHONE (301) 987-6901
FAX (301) 987-0389



ANNE ARUNDEL COUNTY DEPARTMENT OF UTILITIES					
REVISED		APPROVED		DATE	
DATE	BY	CHIEF ENGINEER		DATE	
		APPROVED		DATE	
		CHIEF, DEVELOPER SERVICES DIVISION		REVIEW ENGINEER	
DRAWN BY: J.P.D.		CHECKED BY: M.S.W.		SCALE: 1"=40'	
DATE: JULY 1991		APPROVED		SHEET NO. 4 OF 6	
REVIEW ENGINEER		REVIEW SECTION HEAD		PROJECT NO.	
				APPROVED	
				DATE	


WATER & SEWER PLANS
WATER & SEWER PLAN VIEW
WOODS LANDING
SECTION TWO
TAX MAP 40 BLOCK 18 PARCELS
SUBDIVISION 73-377
THIRD DISTRICT ANNE ARUNDEL COUNTY, MD.



ANAREX, INC.

ENGINEERS SURVEYORS
EXPEDITERS PLANNERS

303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE, MARYLAND 21108-9803
PHONE (301) 987-6901
FAX (301) 987-0589



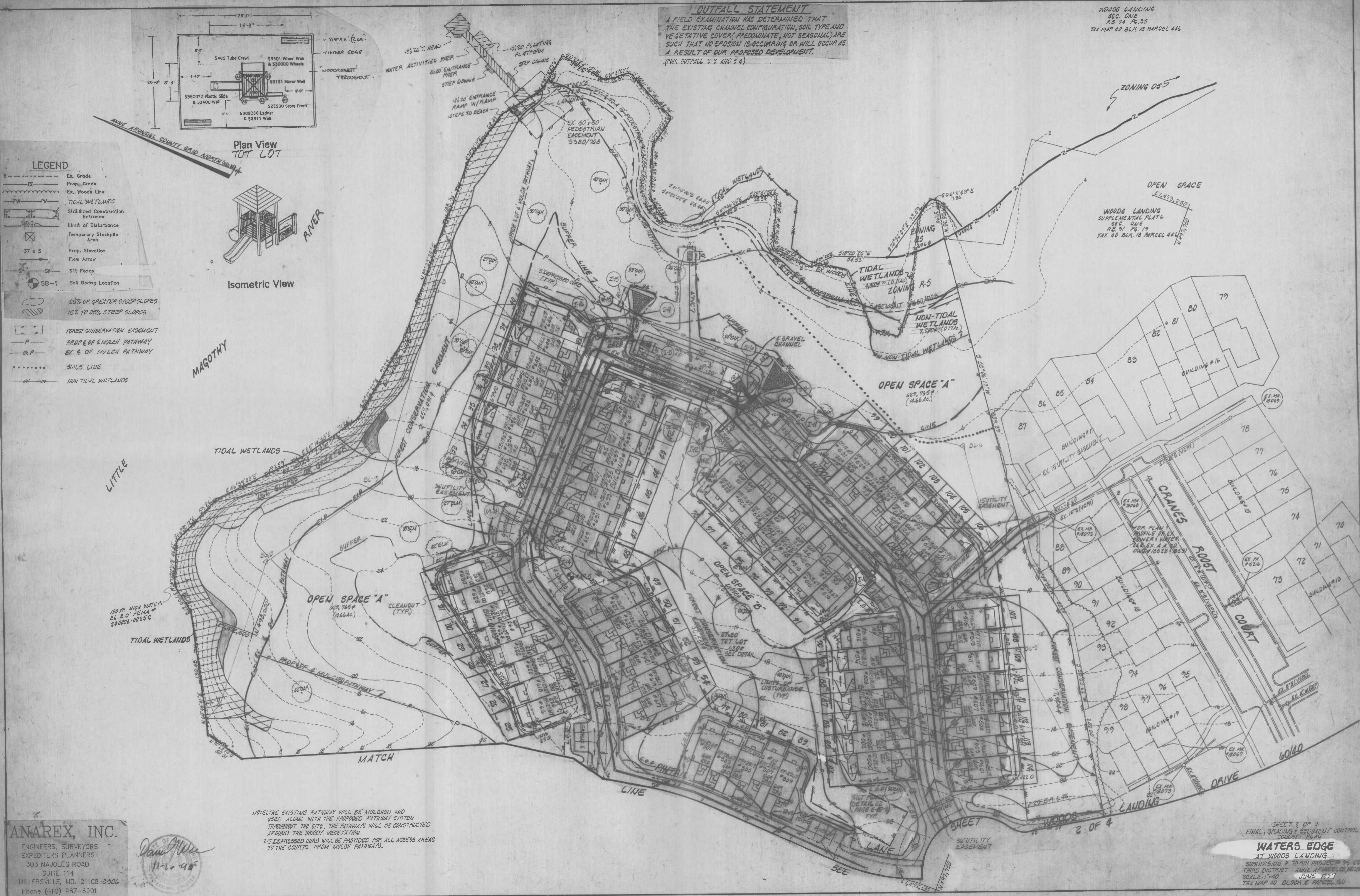
David J. Werner 3-15-91

REVISED		APPROVED	DATE
DATE	BY	CHIEF ENGINEER	
		APPROVED	DATE
		CHIEF, DEVELOPER SERVICES DIVISION	

DRAWN BY: J.P.D.	SCALE: AS SHOWN
CHECKED BY: M.S.W.	SHEET NO. 2 OF 6
DATE: JULY 1991	PROJECT NO.
APPROVED	APPROVED DATE
REVIEW ENGINEER	REVIEW SECTION HEAD

ANNE ARUNDEL COUNTY
DEPARTMENT OF UTILITIES

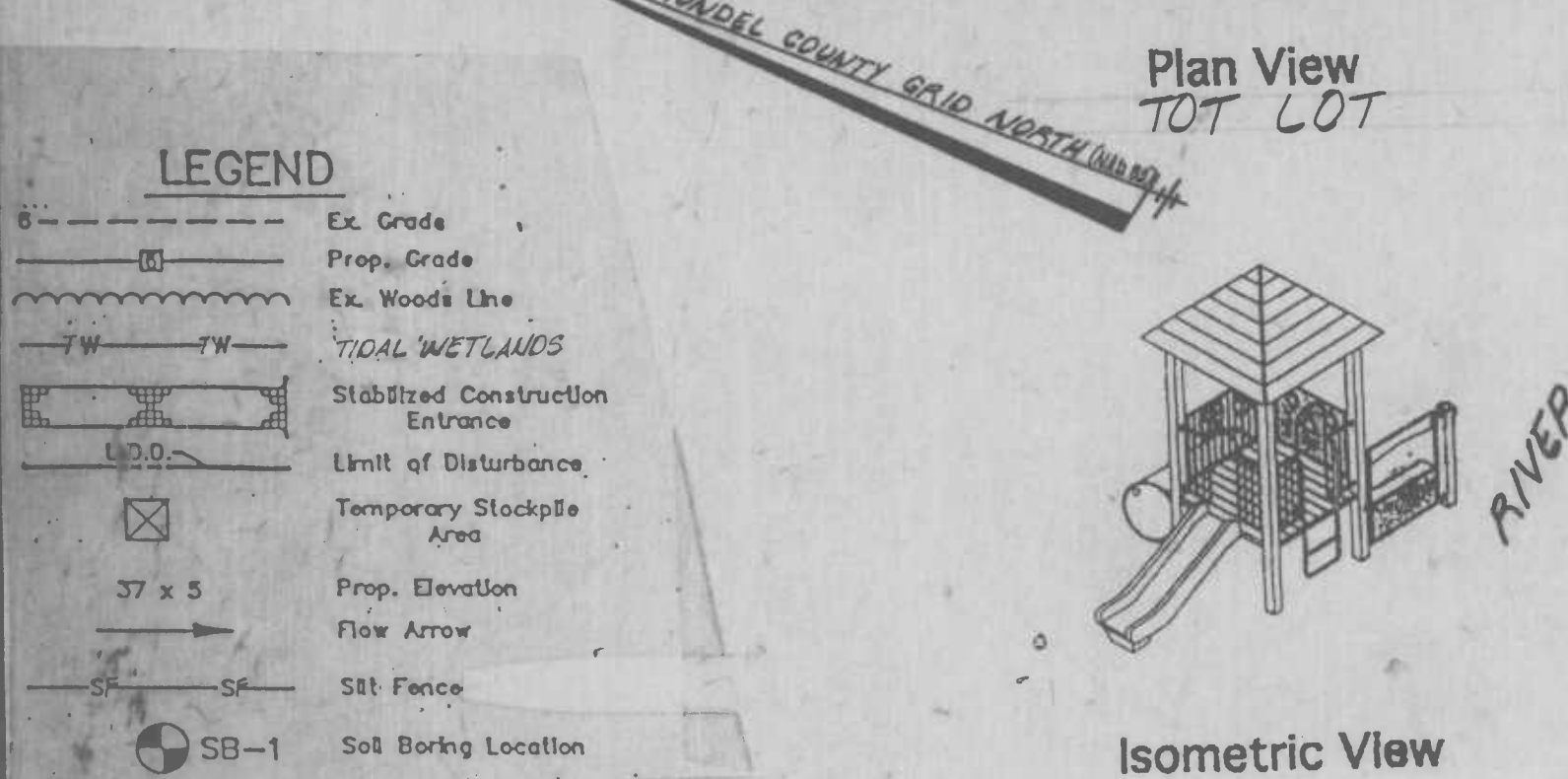
WATER & SEWER PLANS
WATER & SEWER PLAN VIEW
WOODS LANDING
SECTION TWO
TAX MAP 40 BLOCK 18 PARCEL 163
SUBDIVISION# 73-517
THIRD DISTRICT ANNE ARUNDEL COUNTY, MD.



OUTFALL STATEMENT
A FIELD EXAMINATION HAS DETERMINED THAT THE EXISTING CHANNEL CONFIGURATION, SOIL TYPE AND VEGETATIVE COVER (PREDOMINATELY, NOT SEASONAL) ARE SUCH THAT NO EROSION IS OCCURRING OR WILL OCCUR AS A RESULT OF OUR PROPOSED DEVELOPMENT.
(FOR OUTFALL 3-3 AND 5-4)

WOODS LANDING
SEC. ONE
R.B. 74 PG. 35
TAX MAP 40 BLK. 18 PARCEL 446

- LEGEND**
- Ex. Grade
 - Prop. Grade
 - Ex. Woods Line
 - TIDAL WETLANDS
 - Stabilized Construction Entrance
 - Limit of Disturbance
 - Temporary Stockpile Area
 - Prop. Elevation
 - Flow Arrow
 - Silt Fence
 - SB-1 Soil Boring Location
 - 25% OR GREATER STEEP SLOPES
 - 15% TO 25% STEEP SLOPES
 - FOREST CONSERVATION EASEMENT
 - PROP. OF 4' MULCH PATHWAY
 - EX. OF 4' MULCH PATHWAY
 - SOILS LINE
 - NON-TIDAL WETLANDS

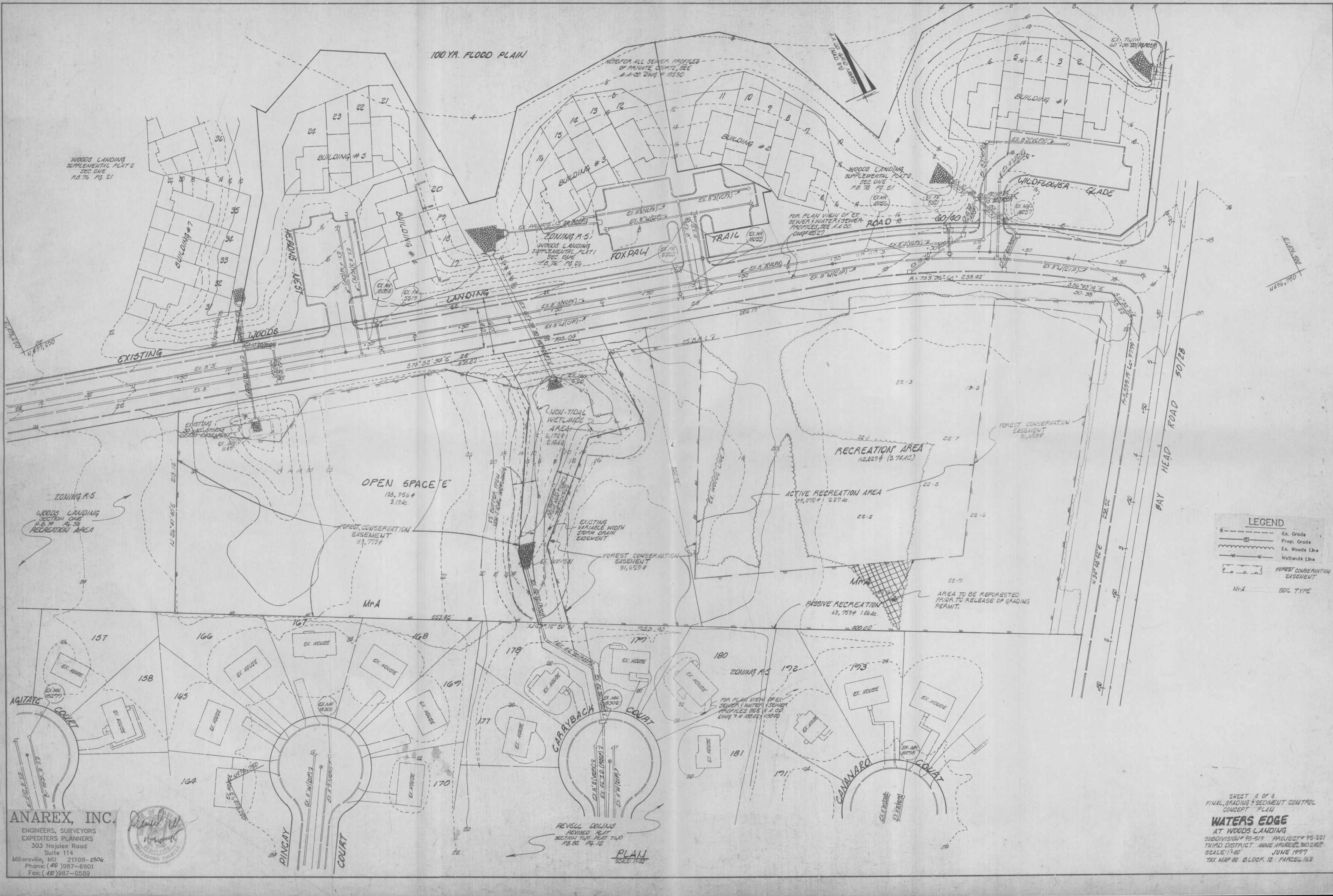


ANAREX, INC.
ENGINEERS, SURVEYORS
EXPEDITORS PLANNERS
303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE, MD. 21108-2506
Phone (410) 987-6901

Paul Miller
11-10-95

NOTE: THE EXISTING PATHWAY WILL BE MULCHED AND USED ALONG WITH THE PROPOSED PATHWAY SYSTEM THROUGHOUT THE SITE. THE PATHWAYS WILL BE CONSTRUCTED AROUND THE WOODY VEGETATION.
25' DEPRESSION CURB WILL BE PROVIDED FOR ALL ACCESS AREAS TO THE COURTS FROM MULCH PATHWAYS.

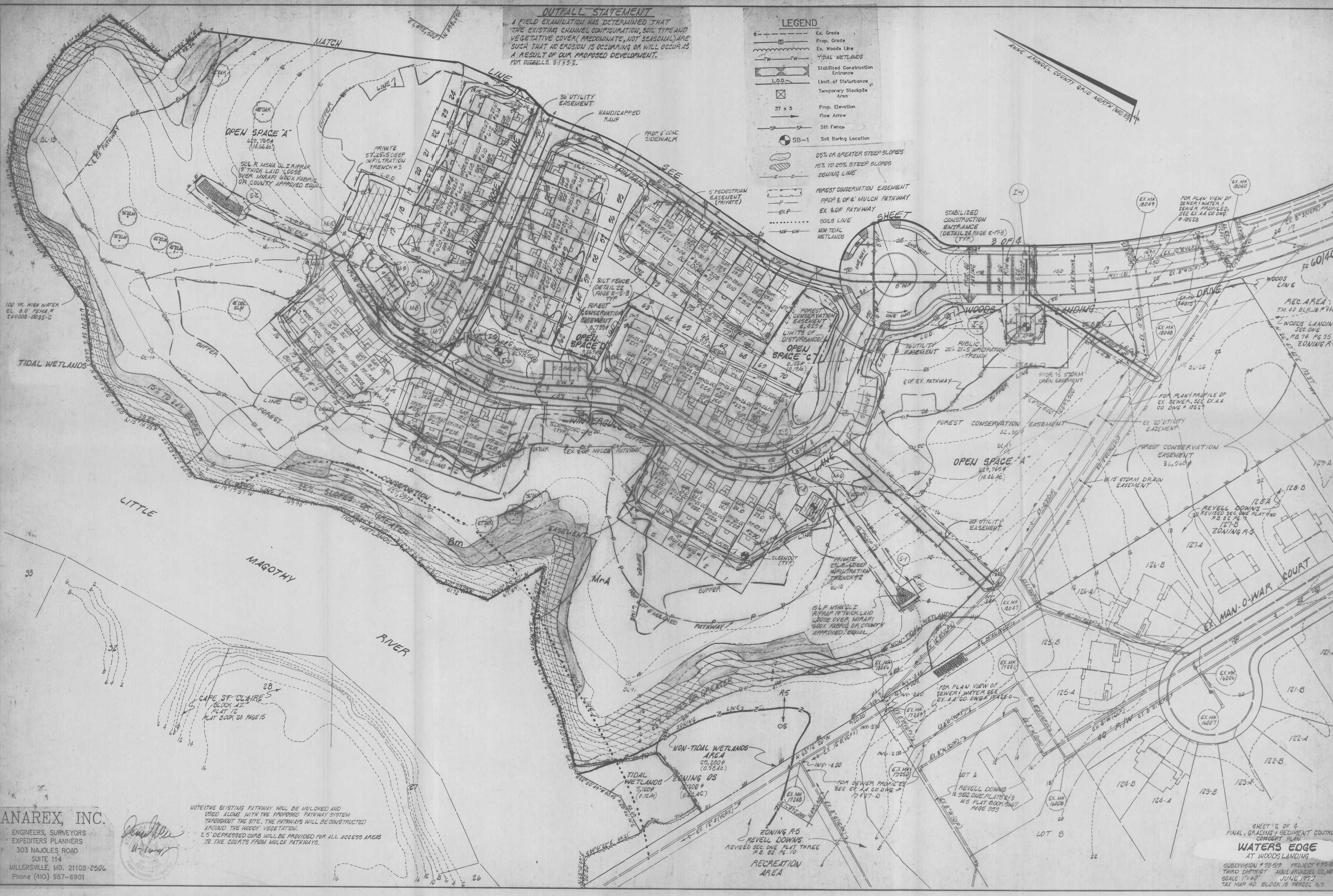
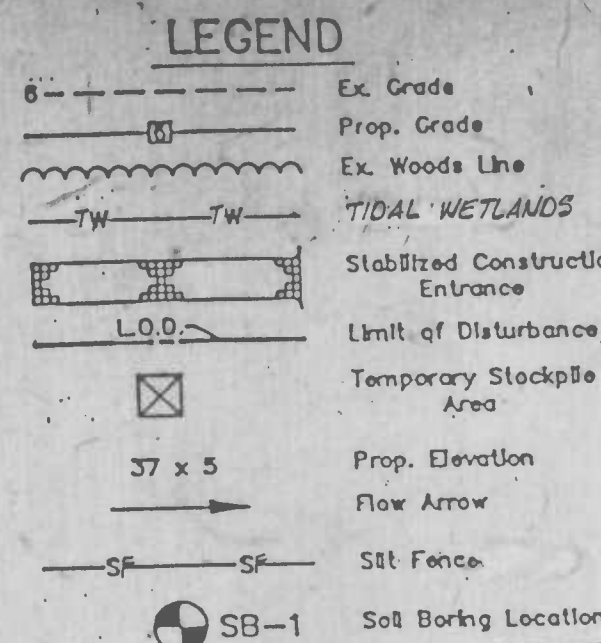
SHEET 3 OF 4
FINAL, GRADING & SEDIMENT CONTROL CONCEPT PLAN
WATERS EDGE
AT WOODS LANDING
SUBDIVISION # 73-27 PROJECT # 95-224
THIRD DISTRICT ANNE ARUNDEL COUNTY, MARYLAND
SCALE: 1"=40' JUNE 1997
TAX MAP 40 BLOCK 18 PARCEL 143



ANAREX, INC.
ENGINEERS, SURVEYORS
EXPEDITERS PLANNERS
303 N. Joles Road
Suite 114
Millersville, MD 21108-2506
Phone: (410) 987-6901
Fax: (410) 987-0589

SHEET 4 OF 4
FINAL GRADING & SEDIMENT CONTROL
CONCEPT PLAN
WATERS EDGE
AT WOODS LANDING
SUBDIVISION # 93-519 PROJECT # 95-221
THIRD DISTRICT ANNE ARUNDEL MD 2107
SCALE 1"=40' JUNE 1997
TAX MAP 80 BLOCK 18 PARCEL 163

OUTFALL STATEMENT
A FIELD EXAMINATION HAS DETERMINED THAT THE EXISTING CHANNEL CONFIGURATION, SOIL TYPE AND VEGETATIVE COVER (PREDOMINATE, NOT SEASONAL) ARE SUCH THAT NO EROSION IS OCCURRING OR WILL OCCUR AS A RESULT OF OUR PROPOSED DEVELOPMENT.
FOR OUTFALLS: 5-1 & 5-2.



ANAREX, INC.
ENGINEERS, SURVEYORS
EXPEDITERS PLANNERS
303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE, MD. 21108-2506
Phone (410) 987-6901

NOTE: THE EXISTING PATHWAY WILL BE MULCHED AND USED ALONG WITH THE PROPOSED PATHWAY SYSTEM THROUGHOUT THE SITE. THE PATHWAYS WILL BE CONSTRUCTED AROUND THE WOODY VEGETATION.
2.5' DEPRESSED CURB WILL BE PROVIDED FOR ALL ACCESS AREAS TO THE COURTS FROM MULCH PATHWAYS.

SHEET 2 OF 4
FINAL, GRADING & SEDIMENT CONTROL
CONCEPT PLAN
WATERS EDGE
AT WOODS LANDING
SUBDIVISION # 78-517 PROJECT # 95-261
THIRD DISTRICT ANNE ARUNDEL CO., MARYLAND
SCALE: 1"=40' JUNE 1997
TAX MAP 40 BLOCK 10 PARCEL 163

SEDIMENT AND EROSION CONTROL NOTES

- SITE PREPARATION:**
1. Stabilize as per Standard Responsibility Note #3.
 2. Temporary perimeter dikes and silt traps, etc., are to be provided as per this plan prior to grading operations with location adjustments to be made in the field as necessary and to be maintained at the end of the working day. The minimum area practical shall be disturbed for the minimum amount of time possible.
 3. Permanent Seeding:
 - A. Seeded preparation: Area to be seeded shall be loose and friable to a depth of at least 3". The top layer shall be loosened by raking, disking or other acceptable means before seeding occurs. In lieu of soil test results, apply 100 pounds of dolomitic limestone and 25 pounds of 10-10-10 fertilizer per 1,000 square feet. Harrow or disk lime and fertilizer into the soil to a depth of at least 3" on slopes flatter than 3:1. No attempt should be made to drag any disked area to make the soil surface smooth after disking.
 - B. Seeding: Apply 5-6 pounds per 1,000 square feet of Kentucky 31 tall fescue seed uniformly on a moist, firm seedbed with a cyclone seeder drill, cultipacker seeder or hydroseeder (slurry includes seeds and fertilizer, recommended on steep slopes only). Minimum seed depth shall be 1/4" in dry soil and 1/2" in sandy soils when using other than the hydroseeder method. Irrigate if soil moisture is deficient to support adequate growth, until vegetation is firmly established.
 - C. Mulching: Mulch shall be unchopped, unrotted, small grain straw applied at a rate of 70 to 90 pounds per 1,000 square feet. Mulch materials shall be relatively free of all kinds of weeds and shall be free of prohibited noxious weeds. Spread mulch mechanically or uniformly by hand, mulch anchoring shall be accomplished immediately after mulch placement to minimize loss by wind or water. This may be done by peg and twine method, mulch anchoring tool, netting or liquid mulch shivers.
 4. Temporary Seeding:

Lime: 100 pounds of dolomitic limestone per 1,000 square feet

Fertilizer: 15 pounds of 10-10-10 per 1,000 square feet

Seed: Perennial rye, Italian rye - 0.92 pounds per 1,000 square feet (February 1 through April 30 or August 15 through November 1)
Wheat - 0.92 pounds per 1,000 square feet (May 1 through August 15)

Mulch: Same as 3C above (November through January 31)

No fill may be placed on frozen ground. All fill to be placed in approximately horizontal layers, each layer having a loose thickness of not more than 8". All fill in roadways and parking areas is to be compacted Type 2 as per Anne Arundel Grading Ordinance, Section 2-2022, and compacted to 90% density, compaction to be determined by ASTM D-1557 (Modified Proctor). Any fill within building area is to be compacted to a minimum of 95% as determined by methods previously mentioned. All other fill shall be compacted sufficiently so as to be stable and prevent erosion and slippage.
 5. Permanent Sod:

Permanent Sod is to be Kentucky 31 tall fescue, state approved sod lime and fertilizer per permanent seeding specifications and lightly irrigate soil prior to laying sod. Sod is to be laid on the contour with all ends tightly abutting. Joints are to be staggered between rows. Water and roll or tamp sod to insure positive root contact with the soil. All slopes greater than 3:1 as shown, are to be permanently seeded or protected with an approved erosion control netting. Additional watering for establishment may be required. Sod is not to be applied on frozen ground.

GENERAL NOTES

1. AGENCY NOTIFICATION
Anne Arundel County Department of Inspection and permits (410-222-7780) 48 hours before starting work.
2. MAINTENANCE OF SOIL EROSION CONTROL PROCEDURES
All damage to the soil and erosion methods shown on this plan shall be repaired at the end of each day work.
3. THE CONTRACTOR IS TO MAINTAIN THESE Sediment and Erosion Control Structures as specified on each detail.
4. GENERAL EROSION CONTROL PROCEDURES
a. Sod is to be placed on all areas shown and on graded area with slopes greater than 3 to 1.
b. All downspouts are to be carried to the toe of fill slopes.
c. Splash blocks are to be provided at all downspouts not discharging on a paved surface.
d. All excess material (if any) shall be removed to a site approved by the Anne Arundel Soil Conservation District (410-222-7822).
5. Cut and fill quantities provided under site analysis do not represent bid quantities. These quantities do not distinguish between topsoil, structural fill or embankment material, nor do they reflect consideration of undercutting or removal of unstable material. The contractor shall familiarize himself with site conditions which may affect the work.

SITE ANALYSIS:

- A. Zoning
Anne Arundel County Department of Inspection and permits (410-222-7780) 48 hours before starting work.
 - B. Predominant Soil Type: s.f. ac.
 - C. Total Area of Site: s.f. ac.
 - D. Disturbed Area: s.f. ac.
- QUANTITIES:**
- A. Cut: c.y.
 - B. Fill: c.y.
 - C. Area to be vegetatively stabilized: s.y. ac.
 - D. Area of Mechanical Stabilization: s.y. ac.

CONSULTANT'S CERTIFICATION

"The Developer's plan to control silt and erosion is adequate to contain the silt and erosion on the property covered by the plan. I certify that this plan of erosion and sediment control represents a practical and workable plan based on my personal knowledge of this site, and was prepared in accordance with the requirements of the Anne Arundel Soil Conservation District Plan Submittal Guidelines and the current Maryland Standards and Specifications for Sediment and Erosion Control. I have reviewed this erosion and sediment control plan with the owner/developer."

Signature: *David J. Werner* MD P.E. License #7593 Date: *11/1/97*
Name (Print): *David J. Werner* Firm Name: *ANAREX, INC.*
Address: 303 N. Joles Road
Suite 114
Millersville, MD 21108

ANAREX, INC.

ENGINEERS SURVEYORS
EXPEDITORS PLANNERS
303 N. Joles Road
Suite 114
MILLERSVILLE, MD 21108 - 2506
Phone: (410) 987 - 6901
Fax: (410) 987 - 0589

OWNER - DEVELOPER

EDWARD ST. JOHN
WOODS LANDING NO. 2 JOINT VENTURE
2120 EXECUTIVE DRIVE
BALTIMORE, MD 21226
PHONE (410) 563-0270

STANDARD RESPONSIBILITY NOTES

(We) certify that:

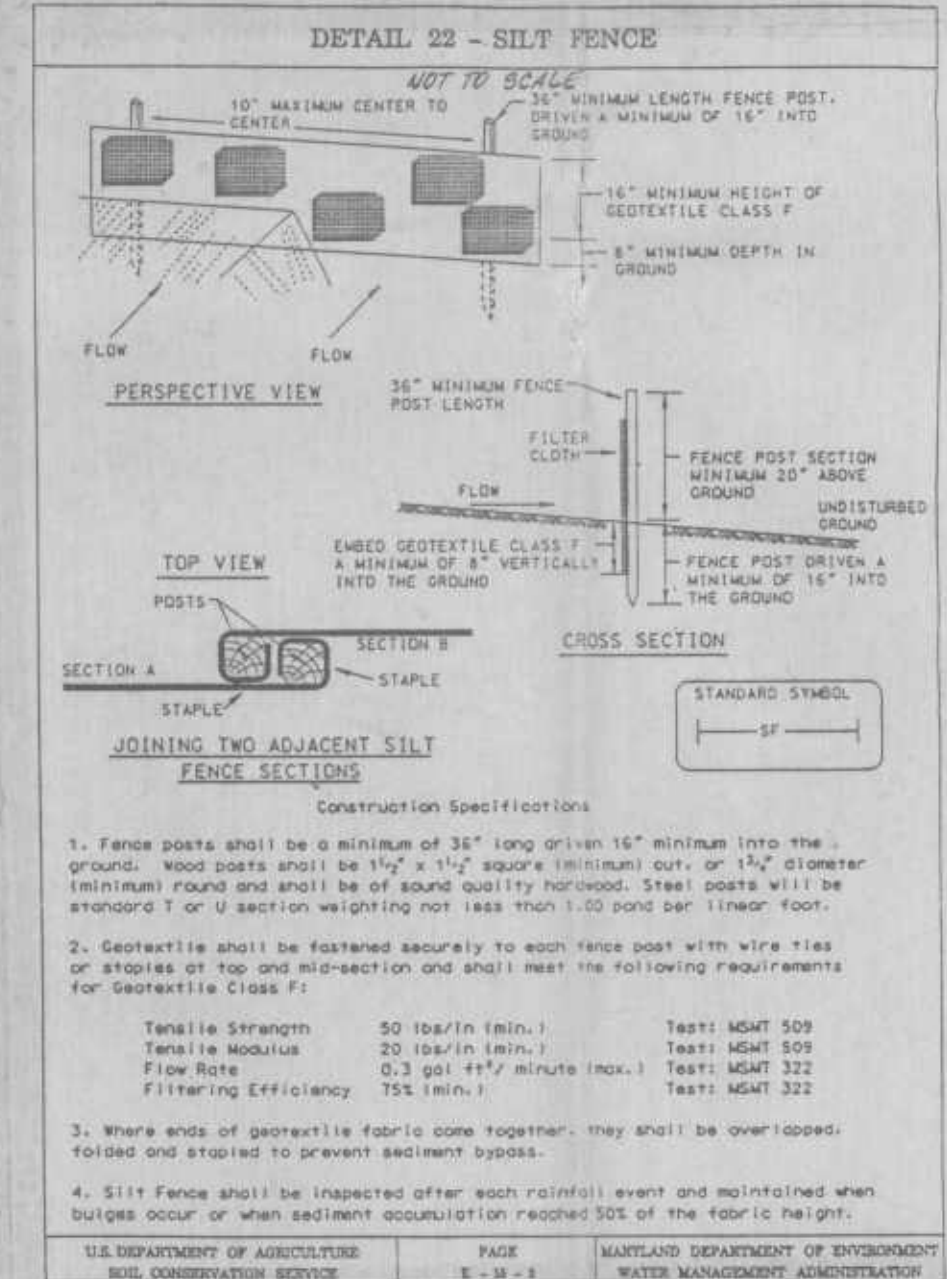
1. All development and construction will be done in accordance with this sediment and erosion control plan, and further, without the right of entry for periodic on-site evaluation by the Anne Arundel Soil Conservation District Board of Supervisors or their authorized agents.
2. Any responsible personnel involved in the construction project will have a certificate of attendance from the Maryland Department of the Environment's approved training program for the control of sediment and erosion before beginning the project.
3. The appropriate enclosure will be constructed and maintained on sediment basin(s) included in this plan. Such structure(s) will be in compliance with Article 21, Section 2-304 of the Anne Arundel County Code.
4. The developer is responsible for the acquisition of all easements, rights and/or rights-of-way that may be required for the sediment and erosion control practices, stormwater management practices and the discharge of stormwater onto or across adjacent or downstream properties included in this plan. He is also responsible for the acquisition of all easements, rights and/or rights-of-way that may be required for grading and/or work on adjacent properties included in this plan.
5. Following initial soil disturbance or redisturbance, permanent or temporary stabilization shall be completed within seven calendar days for the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes greater than 2 horizontal to 1 vertical (3:1) and fourteen days for all other disturbed or graded areas on the project site.
6. The sediment control approvals on this plan extend only to areas and practices identified as proposed work.
7. The approval of this plan for sediment and erosion control does not relieve the developer/consultant from complying with any Federal/State/County requirements pertaining to environmental issues.
8. The developer must request that the Department of Inspections and Permits approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permit, and the Ordinance.
9. On all sites with disturbed areas in excess of 2 acres, approval of the Department of Inspections and Permits shall be required on completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading. Other building or grading inspection approvals may not be authorized until the initial approval by the Department of Inspections and Permits is given.
10. Approval shall be required on final stabilization of all sites with disturbed areas in excess of 2 acres before removal of controls.

Signature(s) of Developer/Owner _____ Date _____

Name: _____ Title: _____

Address: _____

Telephone: () _____



SEDIMENT AND EROSION CONTROL NOTES

I. SPECIFICATIONS

A. DEFINITIONS

All definitions, materials, methods of work and description shall be in accordance with the Standards and Specifications for Soil Erosion and Sediment Control in Developing Areas, U.S. Dept. of Agriculture, Soil Conservation Service, April, 1983, and all addenda thereto, referred to herein as the Erosion Control Manual.

B. SITE PREPARATION

1. Temporary perimeter dikes and silt traps, etc. are to be provided as per this plan prior to grading operations with location adjustments to be made in the field as necessary and to be maintained at the end of working day. The minimum area practical shall be disturbed for the minimum amount of time possible.

2. Permanent Seeding

a. Seeded preparation: Area to be seeded shall be loose and friable to a depth of at least 3". The top layer shall be loosened by raking, disking or other acceptable means before seeding occurs. In lieu of soil test results, apply 100 pounds of dolomitic limestone and 25 pounds of 10-10-10 fertilizer into the soil to a depth of at least 3" on slopes flatter than 3:1. No attempt should be made to drag any disked area to make the soil surface smooth after disking.

b. Seeding: Apply 5-6 lbs. per 1000 square feet of Kentucky 31 tall fescue between February 1 and April 30 or between August 15 and October 31. Apply seed uniformly with a cyclone seeder drill, cultipacker seeder or hydroseeder (slurry includes seeds and fertilizer, recommended on steep slopes only) - one moist, firm seeded. Maximum seed depth should be 1/2" in clayey soils and 1/2" in sandy soils when using other than the hydroseeder method. Irrigate if soil moisture is deficient to support adequate growth, until vegetation is firmly established.

c. Mulching: Mulch shall be unchopped, unrotted small grain straw applied at a rate of 70 to 90 lbs. per 1000 square feet. Mulch materials shall be relatively free of all kinds of weeds and shall be free of prohibited noxious weeds which are: Canada Thistle, Johnsongrass, and Quackgrass. Spread mulch mechanically or uniformly by hand; mulch anchoring shall be accomplished immediately after mulch placement to minimize loss by wind or water. This may be done by peg and twine method, mulch anchoring tool, netting or liquid mulch binders.

3. Temporary Seeding:

Lime: 100 pounds of dolomitic limestone per 1,000 square feet.

Fertilizer: 15 lbs. of 10-10-10 per 1,000 square feet.

Seed: Perennial ryegrass - 0.92 lbs. per 1,000 square feet (Feb 1 through April 30 or Aug 15 through Nov 1)

Millet - 0.92 lbs. per 1,000 square feet (May 1 through Aug 15)

Mulch: Same as above (November 2 through January 31)

4. Fills:

No fills may be placed on frozen ground. All fill to be placed in approximately horizontal layers, each layer having a thickness of not more than 8". All fill in roadways and parking areas is to be classified Type 2 as per Anne Arundel County Grading Ordinance, Section 12-2027, and compacted to 90% density, compaction to be determined by ASTM D-1557 (Modified Proctor). Any fill within building area to be compacted to a minimum of 95% as determined by methods previously mentioned. All other fills shall be compacted sufficiently so as to be stable and prevent erosion and slippage.

5. Permanent Sod:

Permanent sod is to be Kentucky 31 tall fescue stote approved sod, lime and fertilizer per permanent seeding specifications and lightly irrigate soil prior to laying sod. Sod is to be laid on the contour with all ends tightly abutting, joints are to be staggered between rows. Water and roll or tamp sod to insure positive root contact with the soil. All slopes greater than 3:1, as shown, are to be permanently sodded or protected with an approved erosion control netting. Additional watering for establishment may be required. Sod is not to be applied on frozen ground.

C. MAINTENANCE

1. Permanent Seeding

a. Irrigation - If soil moisture becomes deficient, irrigation to prevent loss of stand of protective vegetation, if feasible.

b. Repairs - Inspect all seed areas for failures and make necessary repairs, replacements and reseeding within the planting season, if possible.

2. Sod

a. In the absence of adequate rainfall, watering shall be performed daily or as deemed necessary by the inspector during the first week and in sufficient quantities to maintain moist soil to a depth of 4 inches. Watering should be done during the heat of the day to help prevent wilting.

b. After the first week, sod should be watered as necessary to maintain adequate moisture and insure establishment.

c. First mowing should not be attempted until sod is firmly rooted. No more than 1/3 of the grass leaf shall be removed by the initial cutting or subsequent cuttings. Grass height shall be maintained between 2 and 3 inches unless otherwise specified.

II. GENERAL NOTES:

A. AGENCY NOTIFICATION

Anne Arundel County Department of Inspection and permits (301-222-7780) 48 hours before starting work.

MAINTENANCE OF SOIL EROSION CONTROL PROCEDURES

1. All damage to the soil and erosion methods shown on this plan shall be repaired at the end of each day's work.

2. The contractor is to maintain these Sediment and Erosion Control Structures as specified on each detail.

C. GENERAL EROSION CONTROL PROCEDURES

1. Sod is to be placed on all areas shown and on graded area with slopes greater than 3:1.

2. All downspouts are to be carried to the toe of fill slopes.

3. Splash blocks are to be provided at all downspouts not discharging on a paved surface.

4. All excess material (if any) shall be removed to a site approved by the Anne Arundel Soil Conservation District (301-222-7820).

5. The developer must request the Department of Inspections and Permits approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permit, and the Ordinance.

6. On all sites with disturbed areas in excess of 2 acres, approval of the Department of Inspections and Permits shall be required on completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading. Other building or grading inspection approvals may not be authorized until the initial approval by the Department of Inspections and Permits is given.

7. Approval shall be requested on final stabilization of all sites with disturbed areas in excess of 2 acres before removal of controls.

8. Use of the above SPECIFICATIONS does not preclude meeting all the requirements of the "1993 Maryland Standards and Specifications for Soil Erosion and Sediment Control".

9. Quantities shown on these plans are for engineering estimates only and are approximate. The Contractor should verify all quantities before bidding.

ANAREX, INC.

ENGINEERS SURVEYORS

EXPERTS PLANNERS

303 NAJOLAS ROAD

MILLERSVILLE, MARYLAND 21068-9803

(301) 987-6901

FAX: (301) 987-0589

3-18-94

CRITICAL AREA MAP

SCALE 1"=100'

CRITICAL AREA ANALYSIS

1. TOTAL AREA (WETLANDS) (SITE) = 1,360,850 (31.7 AC.)

2. WETLAND DISTURBED AREA = 736,000 (16.9 AC.) (53%)

3. IMPERVIOUS AREA = 374,588 (8.40 AC.) (25%)

* THE ACTUAL NUMBERS WILL BE DETERMINED BY SITE CONDITIONS PRIOR TO CONSTRUCTION

CRITICAL AREA MAP

SCALE 1"=100'

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CRITICAL AREA MAP

SCALE 1"=100'

STANDARD RESPONSIBILITY NOTES

- I. Developer's Certification:
- I (we) certify that:
- All development and construction will be done in accordance with this sediment and erosion control plan, and further authorize the right of entry for periodic on-site evaluation by the Anne Arundel Soil Conservation District board of Supervisors or their authorized agents.
 - Any responsible personnel involved in the construction project will have a certificate of attendance at a Department of Natural Resources approved training program for the control of sediment and erosion before beginning the project.
 - The appropriate enclosure will be constructed and maintained on sediment basin(s) included in this plan. Such structure(s) will be in compliance with Article 21, Section 2-304 of the Anne Arundel County Code.

2. The developer is responsible for the acquisition of all easements, rights and/or rights-of-way that may be required for the sediment and erosion control practices, stormwater management practices and the discharge of stormwater onto or across adjacent or downstream properties included in this plan. He is also responsible for the acquisition of all easements, rights and/or rights-of-way that may be required for grading and/or work on adjacent properties included in this plan.
3. Following initial soil disturbance or redisturbance, permanent or temporary stabilization shall be completed within seven calendar days as to the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes greater than 3 horizontal to 1 vertical (3:1) and fourteen days as to all other disturbed or graded areas on the project site.
4. The sediment control approvals on this plan extend only to areas and practices identified as proposed work.
5. The approval of this plan for sediment and erosion control does not relieve the developer/consultant from complying with any Federal/State/County requirements pertaining to environmental issues.

- UTILITY CONSTRUCTION
- OUTSIDE SEDIMENT CONTROL PRACTICES
- Excavated trench material shall be placed on upstream side of trench. Immediately following pipe installation the trench shall be backfilled, compacted and stabilized (mulched, seeded and/or sodded or mechanical stabilization).
 - Temporary straw bale dikes shall be placed immediately downstream of any disturbed area intended to remain disturbed longer than one working day. (Temporary straw bale dikes as per S.C.S. standard drawing SBD-1).
 - The contractor shall disturb & open trench the minimum practical area required to accomplish the work designated for each day.
 - All sediment and erosion control practices and vegetative stabilization shall be in accordance with the "Standards and Specifications for Soil Erosion and Sediment Control in Developing Areas".

- CONSTRUCTION STAGING AREA NOTES
- All Construction Vehicles shall enter site from this area.
 - Maintenance - The entrance shall be maintained in a condition which will prevent tracking or flowing of sediment onto public rights-of-way. This may require periodic top dressing with additional stone or condition demand and repair and/or amount of any measure used to trap sediment. All sediment applied, dropped, washed or tracked onto public rights-of-way must be removed immediately.
 - Warning - Vehicles shall be directed to remove sediment prior to entrance onto public rights-of-way. When washing is required, it shall be done on an area stabilized with stone and which drains into an approved sediment trap device.
 - Periodic inspection and needed maintenance shall be provided after each rain.

- CRITICAL AREA MAP
- SCALE 1"=100'

- CRITICAL AREA ANALYSIS
1. TOTAL AREA (WETLANDS) (SITE) = 1,360,850 (31.7 AC.)
2. WETLAND DISTURBED AREA = 736,000 (16.9 AC.) (53%)
3. IMPERVIOUS AREA = 374,588 (8.40 AC.) (25%)
- * THE ACTUAL NUMBERS WILL BE DETERMINED BY SITE CONDITIONS PRIOR TO CONSTRUCTION

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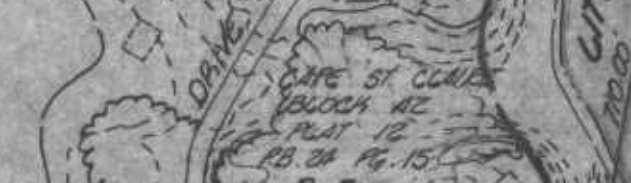
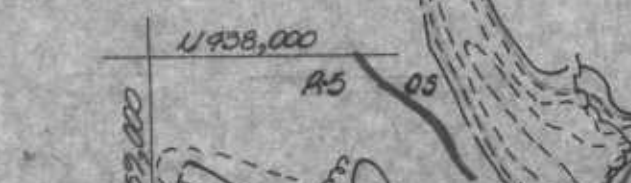
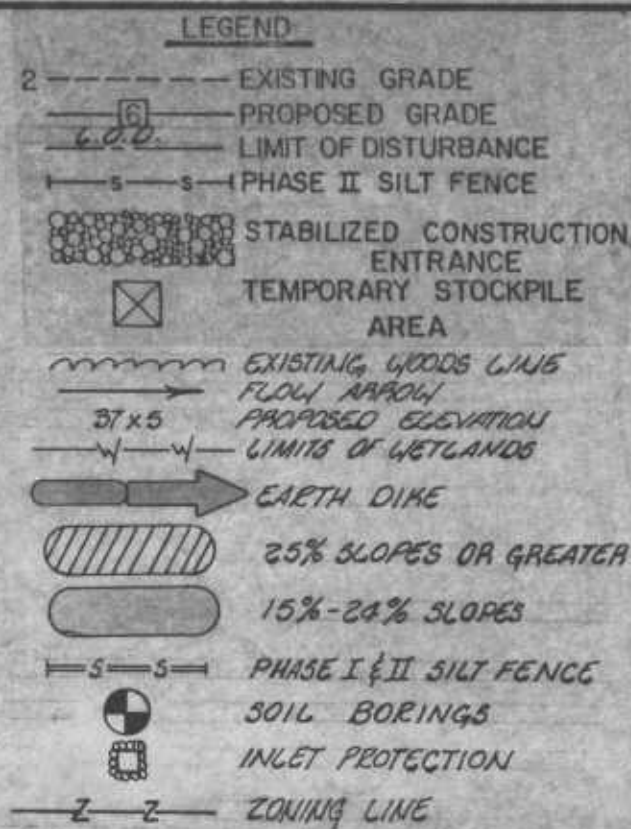
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CONSTRUCTION SCHEDULE

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- CLEAR FOR INSTALL THE PHASE I STABILIZED CONSTRUCTION ENTRANCE.
- CLEAR FOR INSTALL ALL PHASE I SEDIMENT CONTROL MEASURES.
- CLEAR FOR ENOUGH GOODS PUBLIC RIGHT OF WAY.
- INSTALL PUBLIC STORM DRAIN INCLUDING PRIVATE I-7 TO 3-2 & STORMWATER MANAGEMENT TRENCHES 1, 2, 3 & INLET PROTECTION.
- INSTALL WATER LINE IN PUBLIC RIGHT OF WAY.
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- PAVE ROAD.
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ANNE ARUNDEL COUNTY 9410 NORTH

CAPE SAINT CLAIR
PLAT 8
SEC. 1 AND PART OF
BLOCK D-D-D AND SEC. E
PLAT BOOK 22 PAGE 5

MAGOTHY RIVER

LITTLE

RECREATION AREA

CONSERVATION BUILDING

DUCK

SNOW GOOSE LAKE

RECREATION AREA
WOODS LANDING
SECTION TWO PLAT ONE

WOODS LANDING DRIVE 60'

EX. WOODS LANDING DRIVE 60'

ZONING R-5
RECREATION AREA
WOODS LANDING
SECTION ONE
PLAT BOOK 74 PAGE 35

We, hereby assent to this plan of subdivision including the notes on
plat 1 of 3. (For Owner(s) Dedication, Notice To Title Examiners,
Surveyors Certificate and other notes see plat 1 of 3).

Philip E. Ratcliff (General Partner)

Date

John J. Butschky Registered Land Surveyor # 8437 3/18/91 Date

The requirements of the Anne Arundel County Health Department
have been met in preparing this plat.

County Health Officer (Public Systems) Date

Planning and Zoning Officer Anne Arundel County, Maryland Date

ANAREX, INC.

ENGINEERS SURVEYORS
EXPEDITERS PLANNERS

303 MAJOLES ROAD
SUITE 114
MILLERSVILLE MD. 21108-9803
(410) 987-6901

RECEIVED

NOV. 19, 1991

DNR
CRITICAL AREA COMMISSION

PRIVATE RIGHTS OF WAY AREA ~ 1.04 AC.
PLAT TWO AREA TABLE
83 CLUSTER LOT AREA ~ 708 AC.
RECREATION AREA (US ZONING) ~ 0.04 AC.
" (R-5 ZONING) ~ 1.72 AC.
COMMON AREA/ DRIVE LINES ~ 1.14 AC.
OPEN SPACE ~ 1.16 AC.
TOTAL AREA ~ 11.14 AC.

COORDINATE TABLE		
NO.	NORTH	EAST
3	436,767.45	960,385.56
4	437,027.85	960,435.63
46	436,970.10	960,148.02
47	437,243.02	960,045.38
50	437,282.19	960,038.40
53	437,304.66	960,043.36
55	436,863.08	960,212.61
177	437,388.09	960,016.52
431	437,524.07	960,022.32
440	437,590.57	960,004.03
441	437,530.83	960,053.22

CURVE TABLE					
NO.	RADIUS	Δ	APC.	TANGENT	CHORD
46-47	800.00'	21°00'00"	273.22'	148.27'	170.36'
50-53	30.00'	85°08'00"	23.61'	12.46'	23.10'
53-177	55.00'	105°38'07"	101.41'	72.51'	117.99'

WOODS LANDING

SECTION TWO PLAT TWO

CLUSTER TOWNHOUSE LOTS

THIRD DISTRICT ANNE ARUNDEL COUNTY, MD
SCALE: 1"=100' OCTOBER 1991



SUBDIVISION No. 73-519 PROJECT No. TAX MAP 40 BLOCK 18 PARCEL 163
RECORDED IN PLAT BOOK PAGE

COORDINATE TABLE		
NO.	NORTH	EAST
56	435,747.21	761,843.24
57	435,753.38	761,707.07
58	436,183.18	760,856.00
59	436,373.42	760,752.07
60	436,189.54	761,632.71
62	436,072.28	761,829.30
63	436,064.66	761,871.43
65	436,030.15	761,878.47

CURVE TABLE						
NO.	RADIUS	Δ	APC	TANGENT	CURV. BEARING	CHORD
56-65	5,577.19'	01°00'10"	97.99'	49.00'	N34°18'57"E	97.99'
62-60	783.56'	18°07'40"	238.62'	120.21'	N63°49'04"W	232.43'

NOTICE TO TITLE EXAMINERS

- This plat has been approved for recording only and shall become null and void unless:
 - An Inspection Agreement or a Public Works Agreement has been executed and recorded within 2 years after this plat is approved.
 - If required, a Utility Agreement has been executed and recorded within 2 years after this plat is approved, and Construction under each of these agreements has been continuous without interruption for more than 1 year at all times.
- A sale or contract of sale of any lots shown hereon may not be made until necessary improvements have been:
 - Satisfactorily completed under an inspection agreement and subdivider has provided the county with a waiver of the liens from all contractors and sub contractors; or
 - Satisfactorily guaranteed by a Public Works Agreement by a surety bond, certified check, cash or irrevocable letter of credit from a local bank or other security as authorized by law; and
 - If required, satisfactorily guaranteed by a Utility Agreement supported by a Surety Bond, Certified Check, Cash or an Irrevocable Letter of Credit from a local bank or such other security authorized by law.
- A building permit other than a sample permit may not be issued for any construction in this development until the requirements of paragraph 2 above have been complied with. Certificates of use and occupancy may not be issued for any building or structure in the subdivision unless improvements required under a utilities agreement have been completed and basic improvements required under a public works agreement by Article 25 Section 3-101 of the Anne Arundel County Code have been completed.

OWNER'S DEDICATION

We, owners of this property shown and described hereon, hereby adopt this plan of subdivision; establish the minimum building restriction lines and dedicate the streets, easements, floodplain and widening strips to public use; such lands to be deeded to Anne Arundel County or the State Highway Administration, as may be appropriate, upon request. The Recreation Area shown hereon is hereby set aside for the recreational use of residents of this subdivision and shall, in accordance with Article 26 Section 3-104(G) of the Anne Arundel County Code, be conveyed to Woods Landing Section Two Homeowners Association, Inc. immediately after recording of this plat among the land records of Anne Arundel County, Maryland. The Open Space Area shown hereon is hereby set aside for the recreational use of the residents of this subdivision and shall, in accordance with Article 26 Section 3-104(G) of Anne Arundel County, to be conveyed to Woods Landing Section One Homeowners Association, Inc. immediately after recording of this plat among the land records of Anne Arundel County, Maryland. There are no suits, actions at law, leases, liens, mortgages, trusts, easements or Rights of Way affecting the property in this plan of subdivision, except as noted, and all parties in interest thereto have hereunto affixed their assent and willingness to join in this plan of subdivision. (See plat one for additional notes).

ZONING R-1
U.S. GOVERNMENT DEPT.
OF ARMY
NO DEED REFERENCE
AVAILABLE

*** WOODS LANDING
SECTION TWO PLAT THREE
CLUSTER TOWNHOUSE LOTS**

THIRD DISTRICT ANNE ARUNDEL COUNTY, MD
SCALE: 1"=100' OCTOBER 1991

SUBDIVISION No. 73-519 PROJECT No. TAX MAP 40 BLOCK 18 PARCEL 163
RECORDED IN PLAT BOOK PAGE

* ALSO AN ADDITION TO WOODS LANDING, SECTION ONE.

PRIVATE RIGHTS OF WAY AREA ~ 0.13 AC.

PLAT 3 AREA TABLE	
12 CLUSTER LOTS AREA	~ 1.01 AC. (SECTION ONE)
RECREATION AREA	~ 3.74 AC. (SECTION TWO)
COMMON AREA (DRIVE LANES)	~ 0.13 AC. (SECTION ONE)
OPEN SPACE	~ 2.05 AC. (SECTION ONE)
TOTAL AREA ~ 6.93 AC.	

RECEIVED
NOV 19 1991
CRITICAL AREA COMMISSION

We, hereby assent to this plan of subdivision including the notes on plat 1 of 3. (For Owner(s) Dedication, Notice To Title Examiners, Surveyors Certificate and other notes see plat 1 of 3).

Philip E. Ratcliff
Philip E. Ratcliff (General Partner) Date

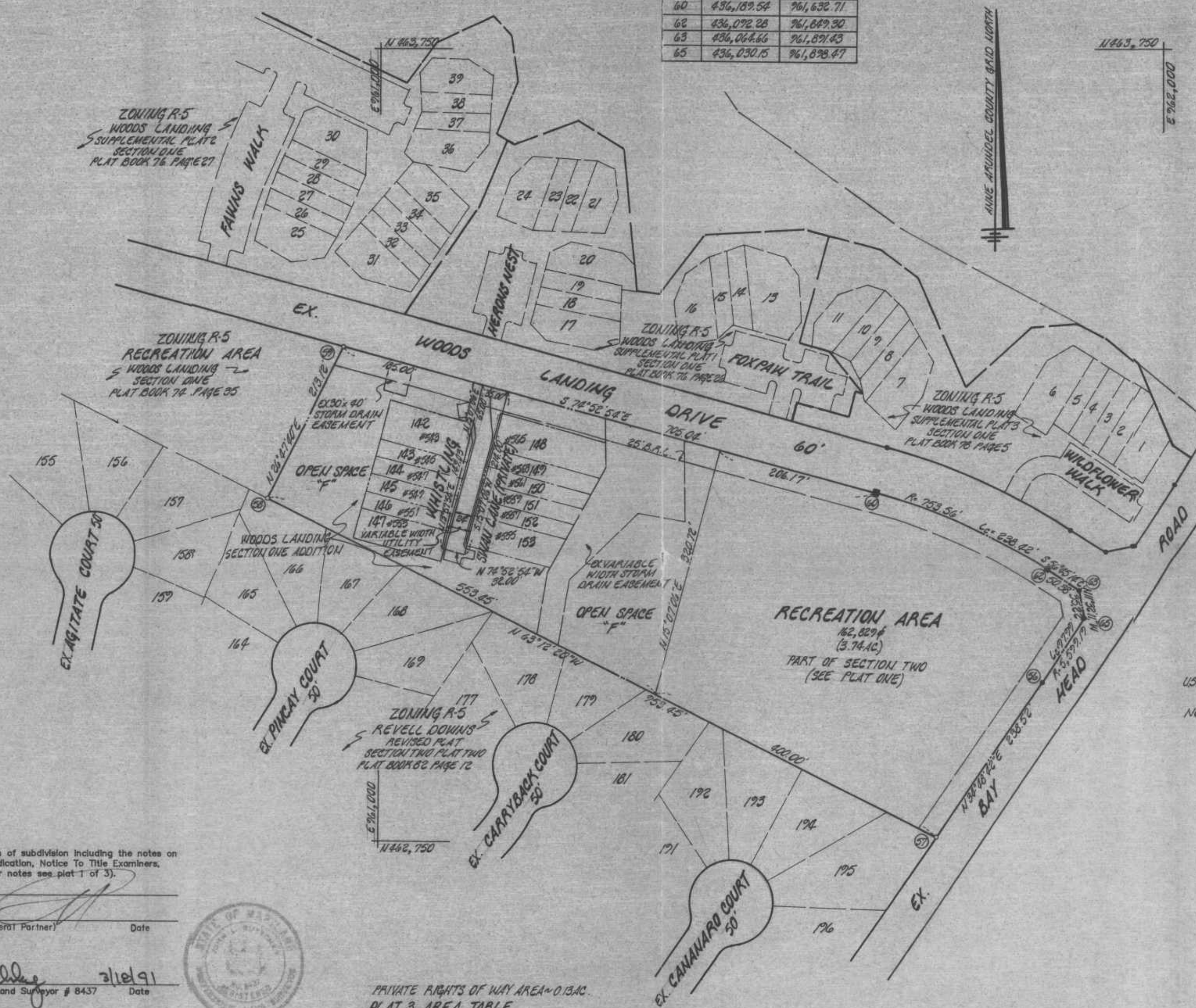
John L. Butschky
John L. Butschky Registered Land Surveyor # 8437 Date 11/19/91

The requirements of the Anne Arundel County Health Department have been met in preparing this plat.

County Health Officer (Public Systems) Date

Planning and Zoning Officer Anne Arundel County, Maryland Date

ANAREX, INC.
ENGINEERS SURVEYORS
EXPEDITORS PLANNERS
303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE MD. 21108-9803
(410) 987-6901



NOTICE TO TITLE EXAMINERS

- This plat has been approved for recording only and shall become null and void unless:
 - An Inspection Agreement or a Public Works Agreement has been executed and recorded within 2 years after this plat is approved.
 - If required, a Utility Agreement has been executed and recorded within 2 years after this plat is approved, and Construction under each of these agreements has been continuous without interruption for more than 1 year at all times.
- A sale or contract of sale of any lots shown hereon may not be made until necessary improvements have been:
 - A. Satisfactorily completed under an inspection agreement and subdivider has provided the county with a waiver of the lien from all contractors and subcontractors; or
 - B. Satisfactorily guaranteed by a Public Works Agreement, by a surety bond, certified check, cash or irrevocable letter of credit from a local bank or other security as authorized by law; and
- If required, satisfactorily guaranteed by a Utility Agreement supported by a Surety Bond, Certified Check, Cash or an Irrevocable Letter of Credit from a local bank or such other security authorized by law.
- A building permit other than a sample permit may not be issued for any construction in this development until the requirements of paragraph 2 above have been complied with. Certificates of use and occupancy may not be issued for any building or structure in the subdivision unless improvements required under a utilities agreement have been completed and basic improvements required under a public works agreement by Article 25 Section 3-101 of the Anne Arundel County Code have been completed.

OWNER'S DEDICATION

We Woods Landing No. 2 Joint Venture, A Maryland Partnership owners of this property shown and described hereon, hereby adopt this plan of subdivision; establish the minimum building restriction lines and dedicate the streets, easements, floodplain and widening strips to public use; such lands to be deeded to Anne Arundel County or the State Highway Administration, as may be appropriate, upon request. The Recreation and Open Space Area shown hereon is hereby set aside for the recreational use of the residents of this subdivision and shall, in accordance with Article 26 Section 3-104(5) of the Anne Arundel County Code, be conveyed to Woods Landing Section Two Homeowners Association, Inc. immediately after recordation of this plat among the land records of Anne Arundel County, Maryland.

There are no suits, actions at law, leases, liens, mortgages, trusts, easements or Rights-of-Way affecting the property in this plan of subdivision, except as noted, and all parties in interest thereto have hereunto affixed their signatures, indicating their assent and willingness to join in this plan of subdivision.

Philip E. Ratcliff (General Partner) Date RESERVED

SURVEYOR'S CERTIFICATE

I hereby certify that the plat shown hereon is correct, that it is a subdivision of part of the land conveyed by Bayhead Limited Partnership to Woods Landing No. 2 Joint Venture

and recorded among the land records of Anne Arundel County, Maryland in Liber 4140 Folio 896. Concrete monuments shown thus and iron pipes shown thus will be placed in accordance with Article 26 Section 3-304 of the Anne Arundel County Code. The total area included in this plat is 34.38 acres of land

John L. Butchky 3/18/91
John L. Butchky Registered Land Surveyor # 8437 Date

In compliance with the Public Service Commission of Maryland order number 60316, dated June 20, 1973. Owner does hereby grant and convey unto the Chesapeake and Potomac Telephone Company of Maryland, a body corporate hereinafter called Grantee, its associated and allied companies and their respective successors, assigns and licensees a R/W Easement to construct, operate, maintain, enlarge, replace and remove telecommunications, electric and gas systems, conduit, pipe, manholes, cables, wire and fixtures under and over the property as described as follows:

A strip(s) of land 10 feet wide and parallel contiguous and adjacent to the property lines of the lots recorded to the full extent that such property lines abut Rights-of-way. Together with the right to ingress and egress to said property at all times for the safe and proper operation and maintenance thereof. The grantees agree to repair or pay for all damage to crops, lawns, fields, fences, driveways and walkways arising from the construction and maintenance of the aforesaid systems. A temporary Grading Easement is reserved on all the lots shown hereon between the Right-of-way lines and the building restriction lines for the purpose of road construction. Said easement will terminate upon the completion of these roads and the release of any maintenance bond by Anne Arundel County, Maryland.

This plan has been approved for recording subject to agreements with the Baltimore Gas and Electric Company and the C & P Telephone Company of Maryland dated and recorded among the land records of Anne Arundel County, Maryland in Liber Folio and Linder Folio respectively.

The requirements of the Anne Arundel County Health Department have been met in preparing this plat.

County Health Officer (Public Systems) Date

Planning and Zoning Officer Anne Arundel County, Maryland Date
Approved by virtue of a special exception to construct townhouses case # 109-74 & 163-77

ANAREX, INC.
ENGINEERS SURVEYORS
EXPEDITORS PLANNERS

303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE MD. 21108-9803
(410) 987-6901

RIGHT TO DISCHARGE

The owner(s) hereby grants and conveys to Anne Arundel County, Maryland the perpetual right to discharge the flow of storm water from such necessary drainage facilities and appurtenances to adequately drain the natural watershed and adjacent properties into existing waterways of natural drainage courses and/or upon existing ground. Such drainage points are indicated by the symbol as shown graphically on this plan.

PRIVATE STORMWATER MANAGEMENT FACILITY STATEMENT

This subdivision contains Private Stormwater Management Facilities

In accordance with the Anne Arundel County Code, Article 21, Section 31-207, no sale or contract of sale of lots shown hereon (as listed) shall be made until a private stormwater management agreement is approved and executed by Anne Arundel County through the Department of Inspections and Permits.

CURVE TABLE						
NO.	RADIUS	Δ	ARC	TANGENT	CHD. BEARING	DIST.
45-48	640.00'	21°00'00"	315.21'	157.39'	N 20°36'38"W	313.45'
47-48	800.00'	17°00'00"	293.22'	148.27'	S 20°36'38"E	271.58'
49-54	30.00'	15°06'00"	23.61'	12.44'	N 32°39'38"W	23.01'
53-50	30.00'	45°06'00"	23.61'	12.44'	S 12°28'22"W	23.01'
54-53	55.00'	170°12'00"	259.38'	-54.81'	N 79°53'22"E	77.65'
1-28	851.14'	5°02'42"	223.50'	112.40'	S 36°37'59"E	222.85'

COORDINATE TABLE		
NO.	NORTH	EAST
1	436,832.08	960,161.24
45	436,839.10	960,096.65
46	436,770.10	960,143.02
47	437,243.02	960,045.38
48	437,232.48	959,986.32
49	437,271.66	959,977.33
50	437,282.19	960,038.40
53	437,304.66	960,033.36
54	437,291.03	959,966.91
177	437,388.09	960,016.52

OPEN SPACE STATEMENT

The land described here with and being designated on this Record Plat as Open Space is for use in common for the residents of the Subdivision of Woods Landing Section Two and lies within a cluster development approved here within compliance with the standards set forth in Article 26, Section 4-101 through 4-103 and Article 28, Section 2-601 through 2-613 of the Anne Arundel County Code.

Subdivision or resubdivision of the open space land designated here on is not permitted and development of the land is permitted only in accordance with the land uses indicated as follows:

- The use of this land is limited to parks, conservation, passive recreation and similar purposes for the residents of said subdivision.

COASTAL FLOOD PLAIN NOTE

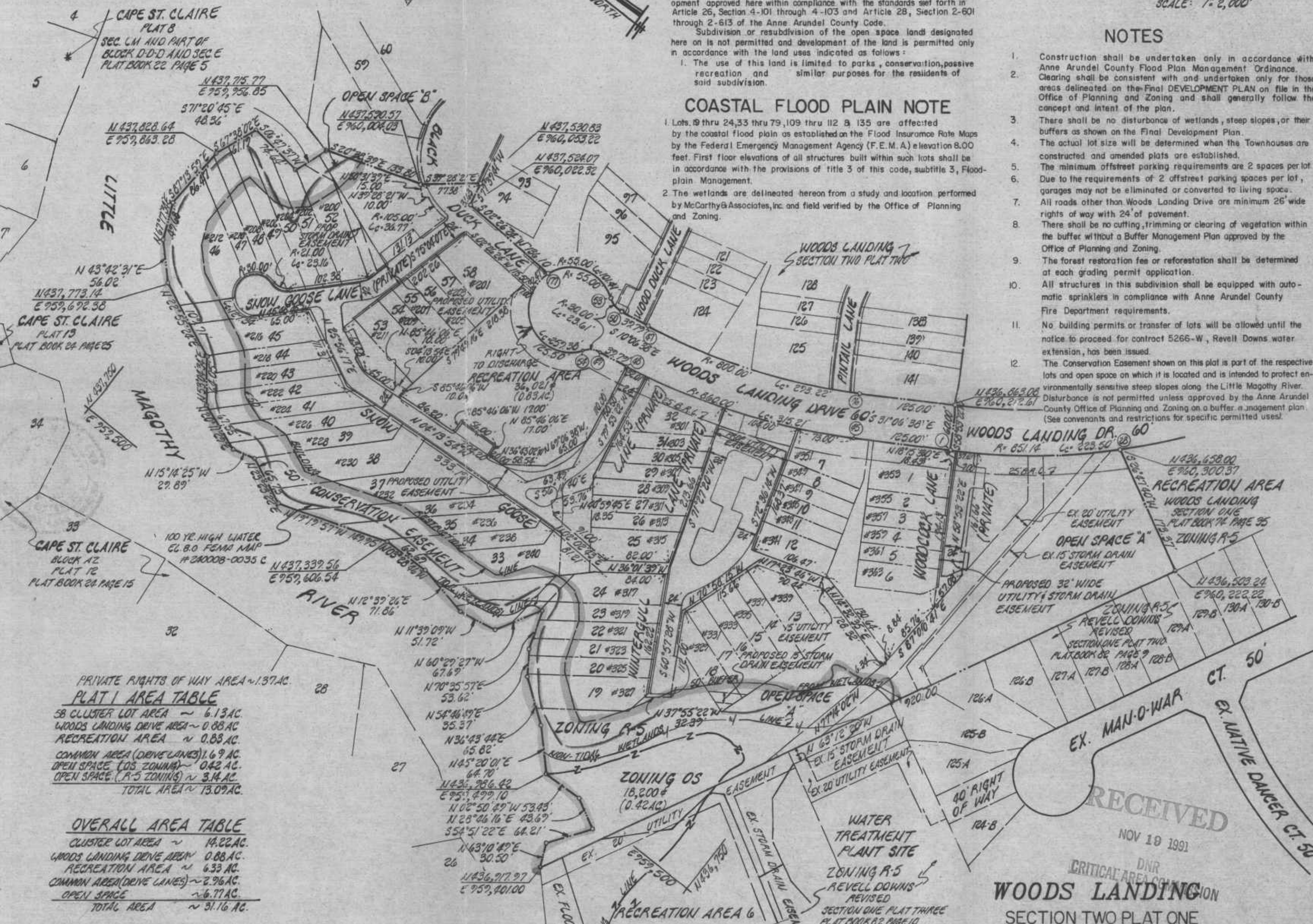
- Lots 49 thru 24, 33 thru 79, 109 thru 112 & 135 are affected by the coastal flood plain as established on the Flood Insurance Rate Maps by the Federal Emergency Management Agency (F.E.M.A.) elevation 8.00 feet. First floor elevations of all structures built within such lots shall be in accordance with the provisions of title 3 of this code, subtitle 3, Flood-plain Management.
- The wetlands are delineated hereon from a study and location performed by McCarthy Associates, Inc. and field verified by the Office of Planning and Zoning.



VICINITY MAP
SCALE: 1"=2,000'

NOTES

- Construction shall be undertaken only in accordance with Anne Arundel County Flood Plain Management Ordinance.
- Clearing shall be consistent with and undertaken only for those areas delineated on the Final DEVELOPMENT PLAN on file in the Office of Planning and Zoning and shall generally follow the concept and intent of the plan.
- There shall be no disturbance of wetlands, steep slopes, or their buffers as shown on the Final Development Plan.
- The actual lot size will be determined when the Townhouses are constructed and amended plats are established.
- The minimum offstreet parking requirements are 2 spaces per lot.
- Due to the requirements of 2 offstreet parking spaces per lot, garages may not be eliminated or converted to living space.
- All roads other than Woods Landing Drive are minimum 26' wide rights of way with 24' of pavement.
- There shall be no cutting, trimming or clearing of vegetation within the buffer without a Buffer Management Plan approved by the Office of Planning and Zoning.
- The forest restoration fee or reforestation shall be determined at each grading permit application.
- All structures in this subdivision shall be equipped with automatic sprinklers in compliance with Anne Arundel County Fire Department requirements.
- No building permits or transfer of lots will be allowed until the notice to proceed for contract 5266-W, Revell Downs water extension, has been issued.
- The Conservation Easement shown on this plat is part of the respective lots and open space on which it is located and is intended to protect environmentally sensitive steep slopes along the Little Magoghy River. Disturbance is not permitted unless approved by the Anne Arundel County Office of Planning and Zoning on a buffer management plan. (See covenants and restrictions for specific permitted uses).



PRIVATE NON-COUNTY ROAD STATEMENT

The private lanes shown hereon are for the ingress and egress for the owners of property abutting thereon, they shall not be acceptable for petition and are a maintenance responsibility of the Homeowners Association and shall be improved to Anne Arundel County public roads standards with any further subdivision approval of the properties abutting thereon.

MINIMUM SETBACKS

WATERFRONT: 50'
REAR: 20'
SIDE: 0'
MINIMUM SETBACK FROM
PRIVATE RIGHT OF WAY SHALL BE 20'

THIRD DISTRICT ANNE ARUNDEL COUNTY, MD
SCALE: 1"=100'
OCTOBER 1991

SUBDIVISION No. 73-519 PROJECT NO. TAX MAP 40 BLOCK 18 PARCEL 163
RECORDED IN PLAT BOOK PAGE

NOTICE TO TITLE EXAMINERS

- This plat has been approved for recording only and shall become null and void unless:
 - an inspection agreement or a public works agreement has been executed and recorded within 2 years after this plat is approved;
 - if required, a utility agreement has been executed and recorded within 2 years after this plat is approved; and
 - construction under each of these agreements has been continuous without interruption for more than one year at all times.
- A sole or contract of sale of any lots shown herein may not be made until necessary improvements have been:
 - satisfactorily completed under an inspection agreement and the subdivider has provided the County with a waiver of the liens from all contractors and subcontractors; or
 - satisfactorily guaranteed by a public works agreement, supported by a surety bond, certified check, cash or irrevocable letter of credit from a local bank or other security as authorized by law; and
 - if required, satisfactorily guaranteed by a utility agreement, supported by a surety bond, certified check, cash, or irrevocable letter of credit from a local bank or other security as authorized by law.
- A building permit other than a sample permit may not be issued for any construction in this development until the requirements of paragraph above have been complied with. Certificates of use and occupancy may not be issued for any building or structure in the subdivision unless improvements required under a public works agreement by Article 25, Section 3-101 of the Anne Arundel County Code have been completed.

DEDICATION BY OWNERS

We Woods Landing No.2 Joint Venture, A Maryland Partnership owners of the property shown and described hereon, hereby adopts this plan of subdivision, establishes the minimum building restriction lines and dedicates Woods Landing Drive and the utility easements, to public use; such lands to be deeded to Anne Arundel County or the State Highway Administration, as may be appropriate, on request. The recreation and open space area shown hereon is hereby set aside for the recreational use of the residents of the subdivision; and shall, in accordance with Article 26, Section 3-102(g) of the Anne Arundel County Code, be conveyed to Woods Landing Section Two Homeowners Association, Inc. immediately after recordation of this plat.

There are no suits, actions of law, leases, liens, mortgages, trusts, easements, or rights-of-way affecting the property included in this plan of subdivision, except the following: and all parties in interest thereto have hereunto affixed their signatures, indicating their assent and willingness to join in this plan of subdivision.

Woods Landing No.2 Joint Venture

Edward St. John (General Partner) 2/20/96 Date

OWNER/DEVELOPER CERTIFICATION

I/We certify that iron pipes marked ● and concrete monuments marked ■ will be set in accordance with the Subdivision Regulations of Anne Arundel County, Maryland.

Woods Landing No.2 Joint Venture

Edward St. John (General Partner) 2/20/96 Date

In compliance with the Public Service Commission of Maryland order number 60316, dated June 20, 1973, Owner does hereby grant and convey unto Bell Atlantic of Maryland, a body corporate hereinafter called Grantee, its associated and allied companies and their respective successors, assigns and licensees a R/W Easement to construct, operate, maintain, enlarge, replace and remove telecommunications, electric and gas systems, conduit, pipe, manholes, cables, wire and fixtures under and over the property as described as follows.

A strip(s) of land 10 feet wide and parallel contiguous and adjacent to the property lines of the lots recorded to the full extent that such property lines abut Rights-of-Way.

Together with the right to ingress and egress to said property at all times for the safe and proper operation and maintenance thereof. The grantees agree to repair or pay for all damage to crops, lawns, fields, fences, driveways and walkways arising from the construction and maintenance of the aforesaid systems.

TEMPORARY CONSTRUCTION EASEMENT

A temporary easement is reserved on all lots shown hereon between the right-of-way line and the building restriction line for the proposed construction of the roads and other improvements required under a public works agreement or a utility agreement. Only that work necessary for the execution of the approved plans under these agreements shall be performed within the Easements and said easements will cease to exist upon satisfactory completion of these improvements and the release of any maintenance security held by Anne Arundel County, Maryland.

This plat has been approved for recording subject to an agreement with Baltimore Gas and Electric and Bell Atlantic of Maryland, dated 11/9/91 and recorded among the land records of Anne Arundel County in Liber 5457 Folio 709 and Liber 5457 Folio 708, respectively.

SURVEYOR'S CERTIFICATE

I hereby certify that the plat shown hereon is correct, that it represents a survey of the property by the surveyor or prepared under the surveyor's direct supervision, and that it is a subdivision of part of the lands conveyed by Boyhead Limited Partnership to Woods Landing No.2 Joint Venture by deed dated 5/26/1983, recorded in the land records of Anne Arundel County Maryland in Liber 4140 folio 896.

The requirements of Section 3-108, the Real Property Article, Annotated Code of Maryland, 1988 replacement volume, (as supplemented) as far as they relate to the making of this plat and the setting of markers have been complied with.

Richard W. Lowe 11-20-95 Date

Richard W. Lowe Property Line Surveyor # 144

Woods Landing No.2 Joint Venture 2/20/96 Date

Edward St. John (General Partner) Date
Approved by virtue of special exception approved by the Zoning Hearing Officer to construct townhouses in an R-5 Zone, cases 109-74 B163-77, Waiver # 6-95 to the stormwater management section of Critical Area Bill 61-93 (Title 3, Section 2-203), granted by the Department of Planning and Code Enforcement, 7/26/95; subject to water quality being provided.

ANAREX, INC.

ENGINEERS SURVEYORS
EXPEDITORS PLANNERS

303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE, MD 21108-2506
PHONE (410) 987-8901

PRIVATE STORMWATER MANAGEMENT NOTE

Stormwater Management Bill 87-94: Private on-site Stormwater Management Facility Systems will be required. The developer/permit applicant shall be responsible for the final trench design and the execution of any grading or building permits. required for lots with

ALLOCATION NOTE

This subdivision plat is subject to the requirements of Article 27, Title 3 of the Anne Arundel County Code as it relates to the allocation of water and wastewater capacity. Failure to comply with the provisions of this law may cause this subdivision plat to become void or cause the properties shown hereon to be subject to a lien for unpaid charges.

COASTAL FLOOD PLAIN AND HIGH HAZARD

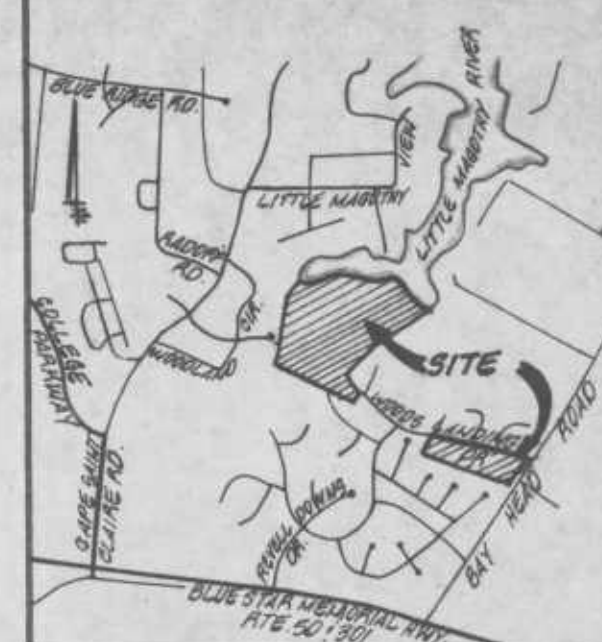
Lots 40,99-106 are affected by a coastal floodplain and/or a coastal high hazard area as established by the Federal Emergency Management Agency (FEMA) on the flood insurance rate maps. The elevation is 8 feet. The first floor elevations of all structures located within these areas or lots shall be constructed in accordance with the provisions of Article 21, Title 1 of the Anne Arundel County Code.

PRIVATE ROAD STATEMENT FOR PARKING COURTS

Wood Duck Lane, Snow Goose Lane, Wintergull Lane & Pinfall Lane are private access and parking for lots 1 through 114. The Woods Landing Section Two Homeowners Association, Inc. is responsible for maintenance of the driveways, parking areas, sidewalks, street lights, signs, storm drains and related appurtenances and the facilities within the private roadways. These facilities are not eligible for County maintenance or acceptance into the County Road System.

DEVELOPMENT PLAN STATEMENT

Development of this subdivision shall be undertaken only in accordance with the approved final development plan on file in the Department of Planning and Code Enforcement.

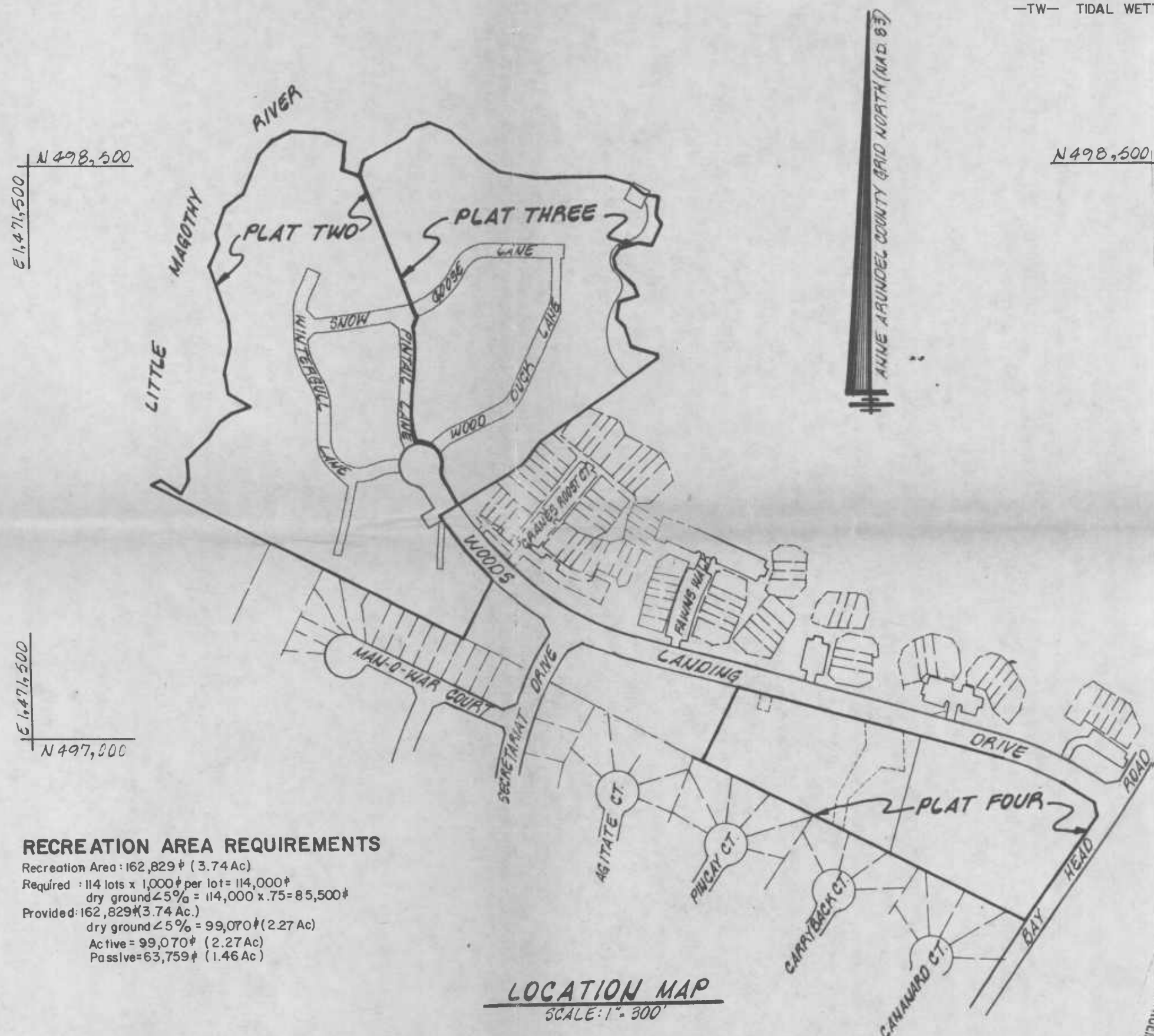


VICINITY MAP

SCALE: 1" = 2,000'
ADC MAP: 16 GRID: H-13

LEGEND

- # 231 HOUSE NUMBER
- NW- NON-TIDAL WETLANDS
- /// FOREST CONSERVATION
- TW- EASEMENT
- TW- TIDAL WETLANDS



RECREATION AREA REQUIREMENTS

Recreation Area: 162,829 # (3.74 Ac)
Required: 114 lots x 1,000 # per lot = 114,000 #
dry ground < 5% = 114,000 x .75 = 85,500 #
Provided: 162,829 # (3.74 Ac)
dry ground < 5% = 99,070 # (2.27 Ac)
Active = 99,070 # (2.27 Ac)
Passive = 63,759 # (1.46 Ac)

CRITICAL AREA ANALYSIS

LDA: LIMITED DEVELOPMENT AREA

- Total site area: 31.16 Ac. (1,357,330 #)
- Total woodlands located on site: 30.00 Ac. (1,306,800 #)
- Woodlands area to be cleared: 8.43 Ac. (367,024 #) (28.1%)
- Impervious area:

Townhouses (114 units x 748 #) ----- 85,272 #
Concrete stoops (114 units x 24 #) ----- 2,736 #
Concrete slabs (114 units x 12 #) ----- 1,368 #
Private sidewalk (114 units x 27 #) ----- 3,078 #
Driveways ----- 25,810 #
Parking courts ----- 71,870 #
Public roads ----- 10,160 #
Public sidewalks ----- 1,560 #

Total = 201,854 # (4.63 Ac.) 14.9%

- The reforestation required by the developer shall be mitigated on a 1 1/2 to 1 basis in the form of off-site plantings in the critical area or payment of fee-in-lieu of plantings prior to grading approval.
- The buffer was established by using four methods:
 - 100' setback from tidal wetlands
 - 250' setback from steep slopes
 - Highly erodible soils greater than 5%
 - 4' for each degree of slope.

GENERAL NOTES

- Anne Arundel County topography sheet: AA-19
- Deed Reference: 4140/896
- F.E.M.A. Map: 240008-0035C elev: 8.0'
- Clearing shall be consistent with and undertaken only for those areas delineated on the Final Development Plan on file in the Department of Planning and Code Enforcement and shall generally follow the concept.
- There shall be no disturbance of wetlands, steep slopes or their buffers except as shown on the Final Development Plan.
- A secured landscaping plan is required prior to issuance of building permits for this subdivision.
- The maximum impervious coverage of 15% has been utilized in this subdivision.
- The minimum offstreet parking requirements are 2 spaces per lot.
- Due to the requirements of 2 offstreet parking spaces per lot garages may not be eliminated or converted to living space.
- There shall be no cutting, trimming or clearing of vegetation within the buffer without a Buffer Management Plan first being approved by the Department of Planning and Code Enforcement.
- All structures in this subdivision shall be equipped with automatic sprinklers in compliance with Anne Arundel County Fire Department requirements.
- The Forest Conservation Easements shown hereon are intended to preserve trees, and is subject to an agreement recorded among the land records of Anne Arundel County, Maryland in Liber Folio
- Non-tidal wetlands area = 0.75 Ac.
- Tidal wetlands area = 0.23 Ac.
- The boundary was surveyed to mean high water.

ZONING / SETBACKS

R-5
FRONT = 20'
REAR = 20'
SIDE = 7 MIN. TO R. (END UNITS)
MINIMUM DISTANCE BETWEEN BUILDINGS
SIDE TO SIDE = 30'
BACK TO SIDE = 30'
BACK TO BACK = 40'
O.S. = 50'

OVERALL AREA TABULATIONS

Right Of Way (Public)	0.39 Ac.
114 Cluster Lot Area	6.08 Ac.
Recreation Area	3.74 Ac.
Common Area	1.95 Ac.
Open Space "A"	14.46 Ac.
Open Space "B"	0.95 Ac.
Open Space "C"	0.19 Ac.
Open Space "D"	0.21 Ac.
Open Space "E"	3.19 Ac.
Total Open Space	19.00 Ac.
Total Area	31.16 Ac.

PLAT ONE OF FOUR WOODS LANDING SECTION TWO CLUSTER TOWNHOUSE LOTS

SUBDIVISION NO. 73-519 PROJECT NO. 95-221

TAX MAP 40 BLOCK 18 PARCEL 163

SCALE: 1" = 300' NOVEMBER 1995



THIRD DISTRICT ANNE ARUNDEL COUNTY, MD. 21401

The requirements of the Anne Arundel County Health Department have been met in preparing this plat. (Public Systems)

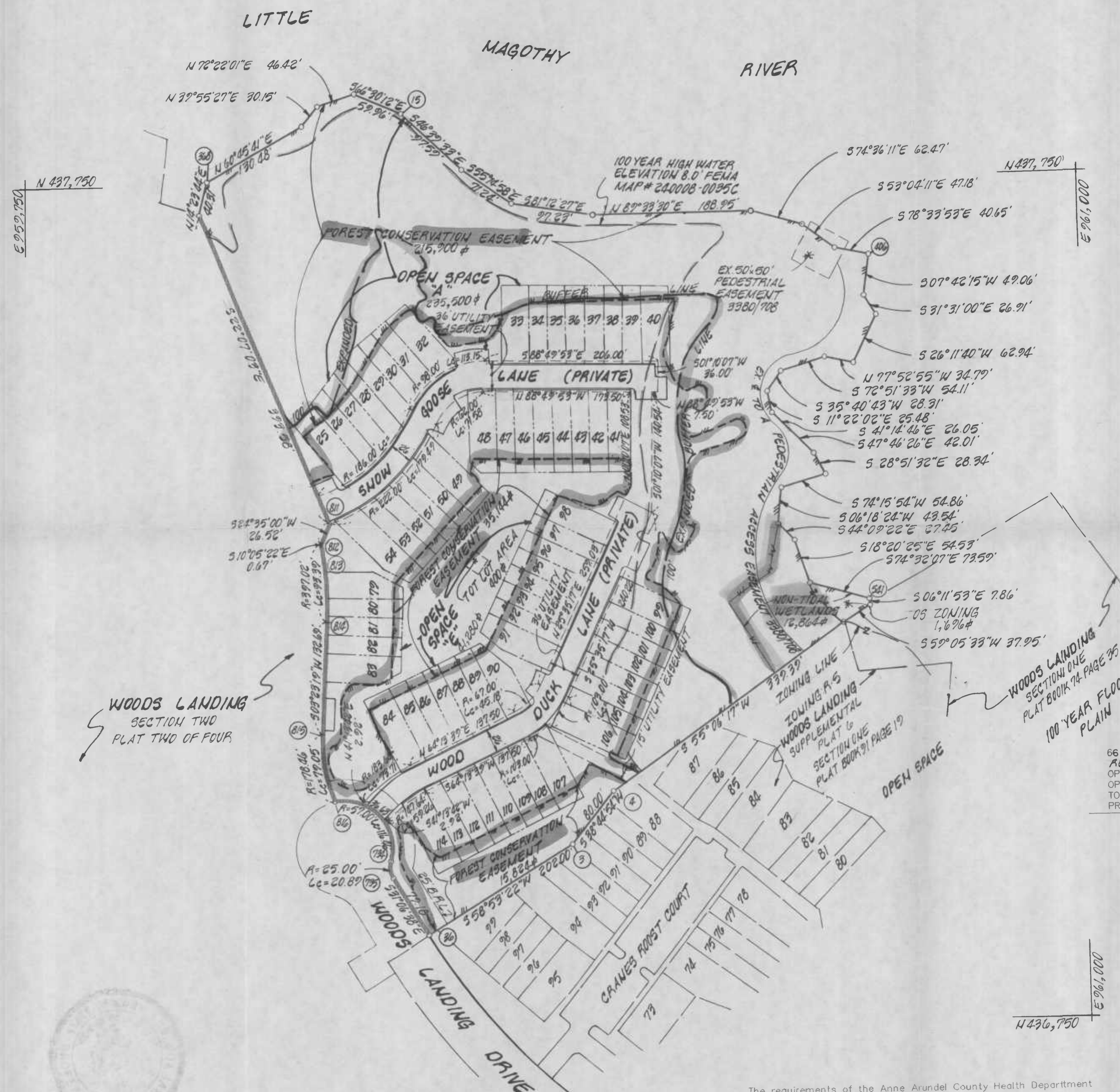
Health Officer _____ Date _____

Director, Department of Planning And Code Enforcement Date
Anne Arundel County, Maryland

RECORDED IN PLAT BOOK _____ PAGE _____ PLAT NO _____

CURVE DATA TABLE						
CURVE	RADIUS	TANGENT	LENGTH	DELTA	CHORD	CHORD BEARING
734-735	25.00'	11.10	20.89'	229°10'59"	291.58'	N20°36'38"W
734-816	57.00	23.13'	116.46	117°03'41"	97.23'	S41°45'54"E
815-816	178.46'	40.19'	79.05'	32°06'23"	78.41'	S09°18'07"E
813-814	397.02'	46.91'	93.39'	14°25'54"	93.18'	S03°21'01"E

COORDINATE TABLE		
POINT	NORTHING	EASTING
3	436,967.45	960,385.56
4	437,029.85	960,435.63
15	437,831.82	960,199.30
368	437,754.81	959,966.88
406	437,657.83	960,751.63
541	437,251.31	960,745.71
734	436,951.00	960,169.17
735	436,930.87	960,171.70
736	437,863.08	960,212.61
811	437,351.15	960,105.04
812	437,327.04	960,094.01
813	437,326.38	960,094.12
814	437,233.36	960,099.57
816	437,100.90	960,091.73
815	437,023.53	960,104.40
36	437,023.10	960,476.06



PLAT THREE AREA TABLE

66 CLUSTER LOT AREA (PRIVATE)	3.17 Ac.
RECREATION AREA (TOT LOT)	0.01 Ac.
OPEN SPACE AREA "A"	5.41 Ac.
OPEN SPACE AREA "E"	0.95 Ac.
TOTAL OPEN SPACE AREA	6.36 Ac.
PRIVATE DRIVES AREA	0.71 Ac.
TOTAL AREA	10.25 Ac.

SEE PLAT ONE OF FOUR FOR:
NOTICE TO TITLE EXAMINERS,
OWNER'S DEDICATION,
SURVEYOR'S CERTIFICATE AND
OTHER NOTATIONS.

ANAREX, INC.

ENGINEERS SURVEYORS
EXPEDITERS PLANNERS

303 NAJOLAS ROAD
SUITE 114
MILLERSVILLE, MD. 21108
PHONE: (410) 987-6901



Richard W. Lowe Property Line Surveyor # 144 Date

WE ASSENT TO THIS PLAN OF SUBDIVISION
WOODS LANDING NO. 2 JOINT VENTURE

Philip E. Ratcliff (General Partner) Date

The requirements of the Anne Arundel County Health Department
have been met in preparing this plat.

Health Officer _____ Date _____
Director, Planning And Code Enforcement _____ Date _____
Anne Arundel County, Maryland

RECORDED IN PLAT BOOK _____ PAGE _____ PLAT NO. _____

PLAT THREE OF FOUR **WOODS LANDING**

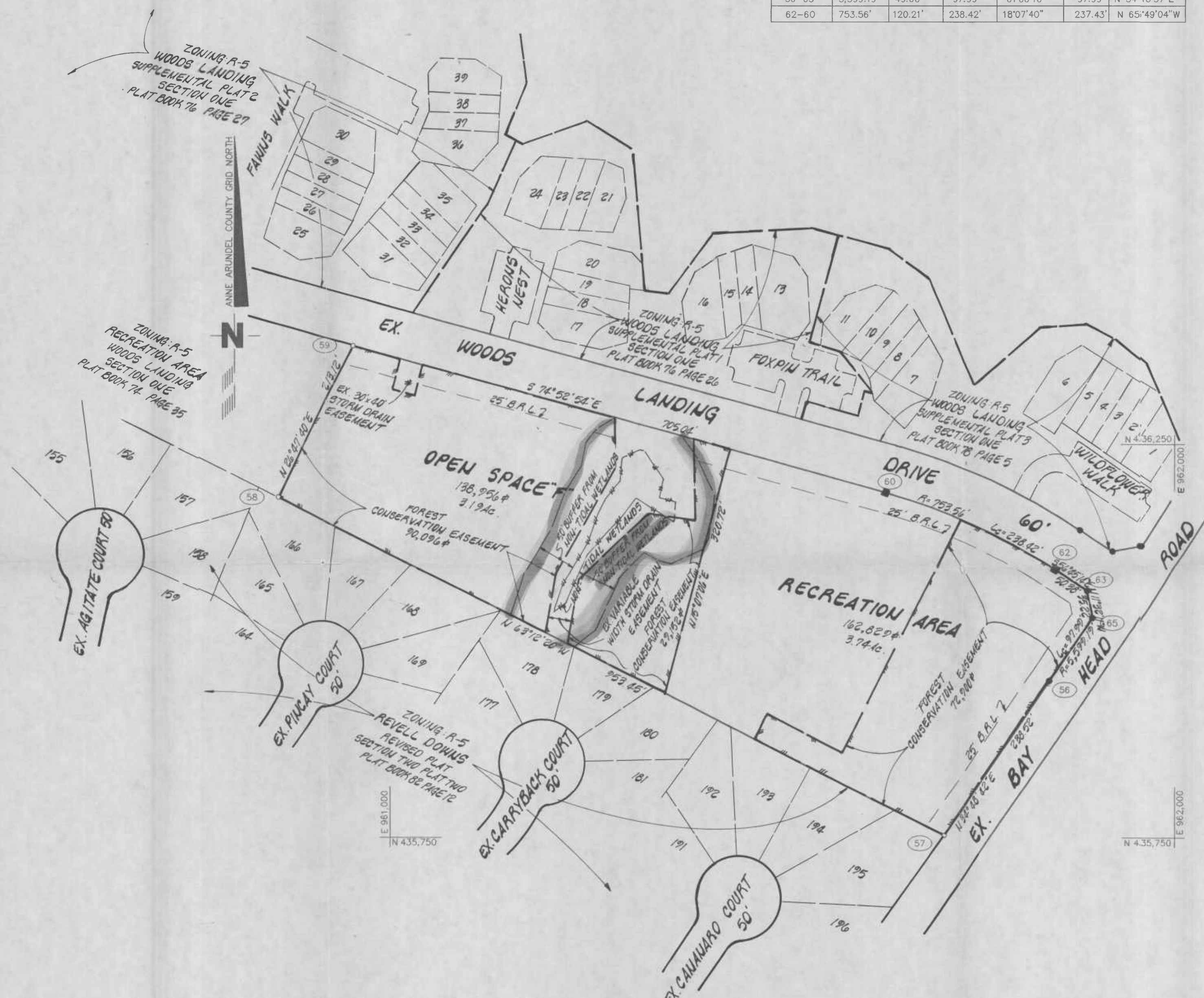
SECTION TWO
CLUSTER TOWNHOUSE SUBDIVISION

SUBDIVISION NO. 73-512 PROJECT NO. _____
TAX MAP 40 BLOCK 18 PARCEL 163
THIRD DISTRICT ANNE ARUNDEL COUNTY, MD. 21401
SCALE: 1" = 100' NOVEMBER 1995



CURVE DATA TABLE						
CURVE	RADIUS	TANGENT	LENGTH	DELTA	CHORD	CHORD BEARING
56-65	5,599.19'	49.00'	97.99'	01°00'10"	97.99'	N 34°18'57"E
62-60	753.56'	120.21'	238.42'	18°07'40"	237.43'	N 65°49'04"W

COORDINATE TABLE		
POINT	NORTHING	EASTING
56	435,949.21	961,843.24
57	435,753.38	961,707.07
58	436,183.18	960,856.00
59	436,378.42	960,952.07
60	436,189.64	961,632.71
62	436,092.28	961,849.30
63	436,064.66	961,891.43
65	436,030.15	961,898.47



PLAT FOUR AREA TABLE	
RECREATION AREA	3.74 Ac
OPEN SPACE "F"	3.19 Ac
TOTAL AREA	6.93 Ac

SEE PLAT ONE OF FOUR FOR:
NOTICE TO TITLE EXAMINERS,
OWNER'S DEDICATION,
SURVEYOR'S CERTIFICATE AND
OTHER NOTATIONS.

ANAREX, INC.
ENGINEERS SURVEYORS
EXPEDITORS PLANNERS
303 NAJILES ROAD
SUITE 114
MILLERSVILLE, MD 21109
PHONE: (410) 987-6901

Richard W. Lowe 11-20-95
Richard W. Lowe Property Line Surveyor # 144 Date

WE ASSENT TO THIS PLAN OF SUBDIVISION
WOODS LANDING NO. 2 JOINT VENTURE

Philip E. Ratcliff (General Partner) Date

The requirements of the Anne Arundel County Health Department
have been met in preparing this plat.

Health Officer _____ Date _____

Director, Planning And Code Enforcement _____ Date _____
Anne Arundel County, Maryland

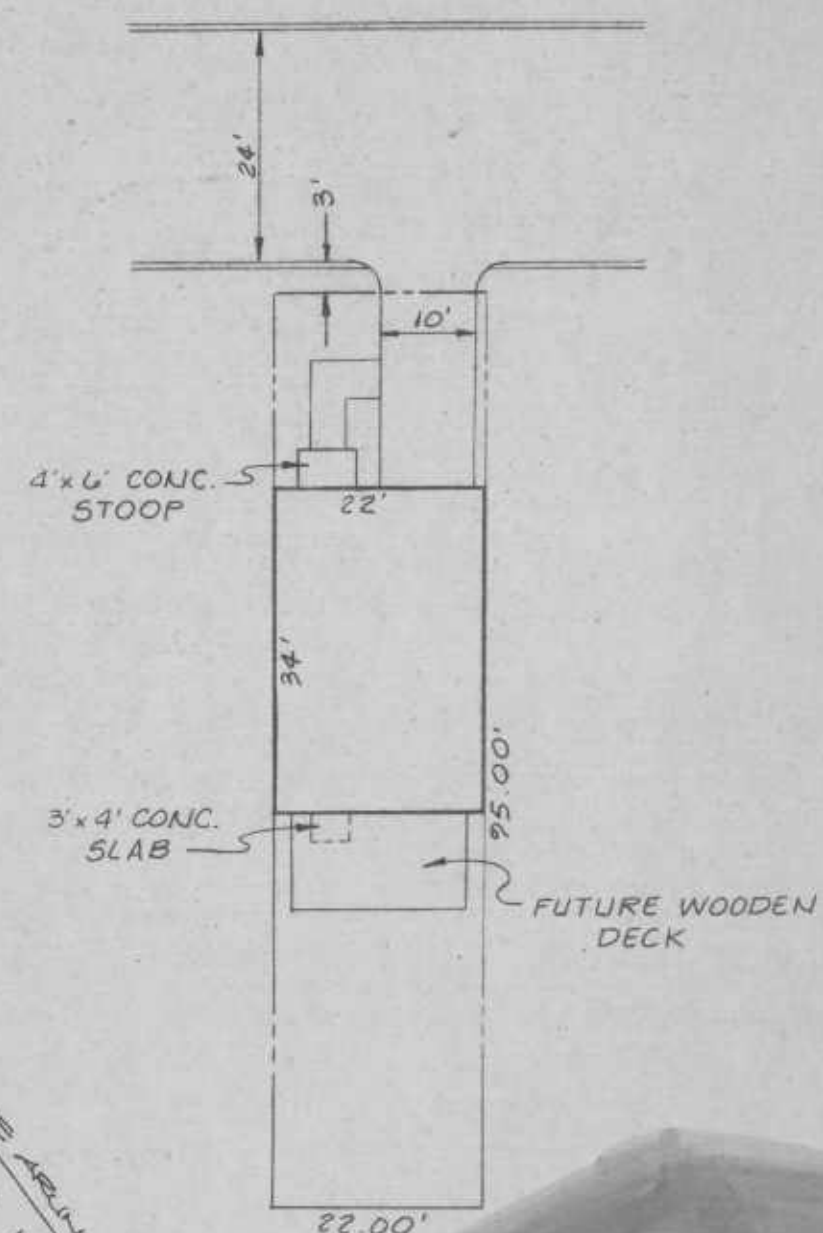
PLAT FOUR OF FOUR **WOODS LANDING**

SECTION TWO
CLUSTER TOWNHOUSE LOTS
SUBDIVISION NO. 73-519 PROJECT NO.
TAX MAP 40 BLOCK 18 PARCEL 163
THIRD DISTRICT ANNE ARUNDEL COUNTY, MD. 21401
SCALE: 1" = 100' NOVEMBER 1995



RECORDED IN PLAT BOOK _____ PAGE _____ PLAT NO _____

LITTLE
MAGOTHY
RIVER



1. TOTAL SITE AREA: 51.6 ACRES
2. WOODLANDS LOCATED ON SITE: 28.4 ACRES
3. WOODLANDS ALLOWED TO BE CLEARED: 30%
OR 8.83 ACRES.
4. TOTAL WOODLANDS TO BE CLEARED: 8.83 AC. OR 30.0% OF WDS
5. INTERFERING COVERAGE ALLOWED ON SITE: 15% OF SITE
OR 4.674 ACRES
6. TOTAL INTERFERING COVERAGE: 4.68 AC. OR 16.8% ON SITE



ENGINEERS, SURVEYORS
EXPEDITERS PLANNERS
303 NAJOLLES ROAD
SUITE 114
MILLERSVILLE, MD. 21103
Phone (410) 987-6901

OWNER/DEVELOPER
WOODS LANDING JOINT VENTURE
2613 CABOVER DRIVE
HANOVER, MD. 21076
(810) 553-0070

MAY 4 1994

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

PRE-SKETCH
REVISED

A 114 TOWNHOUSE LOT SUBDIVISION
SUBDIVISION #73-519 PROJECT #91-065

3RD DISTRICT ANNE ARUNDEL COUNTY, MD

SCALE: 1"=40' MARCH, 1999

TAX MAP 40 BLOCK 18 PARCEL 163

SHEET 2 OF 2

LEGEND

EX. CONTOURS :
PROP. CONTOUR :

SILT FENCE =
LIMIT OF DIST. =

BUFFER LINE
15% - 24% SLOPES
25% - GREATER SLOPES

SEDIMENT TRAP:

STABILIZED CONSTRUCTIVE
ENTRANCE

EARTH DIKE

659-99
AA 779-95 Woods Landing II
SUB 659-99

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-322-9047 OR 410-974-2418
410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

ANNE ARUNDEL COUNTY
BOARD OF APPEALS
April 29, 1992
PROTESTANTS
EXHIBIT 12
NAME W.L.
CASE 3A10-92A
DATE 8-18-92

Mrs. Ardath Cade
Planning and Zoning Officer
Office of Planning and Zoning
2664 Riva Road
Box 2700
Annapolis, MD 21404

Dear Mrs. Cade:

This letter and attachment describe changes which Chesapeake Bay Critical Area Commission staff have identified to assure that the County Program is consistent with the State Critical Area Criteria (COMAR 14.15) and the Critical Area Law (Natural Resources Article, §8-1801 et seq.). I hope that this information will be helpful to your staff as it undertakes the four-year Comprehensive Review of the County Critical Area Program. This letter follows up on earlier letters and meetings with you and your staff regarding possible changes to the County Program. We would like to meet further to discuss any or all of these issues, and would be happy to discuss any additional changes which the County would like to make to its Critical Area Program.

The Critical Area Commission approved the County Program in 1988 as complete and sufficient. However, subsequent examination and experience with implementation have revealed that some modifications are necessary if the County Program is to meet the intended goals of the Critical Area Law.

Commission staff consider several issues to be of particular importance in assuring that the County Program is implemented in a manner that meets the goals of the Critical Area Law: grandfathering language (referenced as Item 7 in the attached Assessment), environmental information for water-dependent facilities (Item 8), building permit review only on riparian lots (Item 21), and exemption of certain subdivisions from the County Critical Area ordinance (Item 22). These issues are discussed in further detail below, along with some of the other suggested changes.

Mrs. Cade
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All of the identified changes are outlined in the attached Assessment of Conformance. In a December 5, 1991 letter commenting on the draft version of the Assessment, Elaine Peiffer on your staff acknowledged that some of the items, identified in the attached Assessment as Items 1, 2, 3, 5, and 13, are considered necessary changes. The letter also indicates that County staff do not consider that the other items identify necessary changes. Evidently, there is a difference in interpretation or acceptance of the level of clarity in the ordinance language. Based on review by our Assistant Attorney General, Items 16, 17, and 20 have been added to the draft Assessment previously presented to your staff. Item 4 has also been added from the version previously discussed.

One issue, Item 6, concerns the appropriate types of uses in the Resource Conservation Area (RCA). When Critical Area mapping was initially undertaken, it was expected that existing zoning would be required to conform to RCA regulations, a designation based on existing uses as resource-dominated areas. Where overlay zones were used for the RCA, the zoning category was not changed as assumed. Substantial new commercial, industrial, or institutional uses were not envisioned by the language or intent of the RCA designation. While meeting the Limited Development Area (LDA) requirements such as limitation to 15% impervious surfaces and 20% forest clearing ameliorates some impacts of development, the RCA was not meant to be treated like the LDA for uses other than residential. If new commercial, industrial, or institutional uses are to be developed in accordance with underlying zoning, growth allocation should be applied to change the designation to LDA. While we understand that the County has limited amounts of growth allocation available because of use by interim developments, the current practice of allowing uses other than residential merely to comply with LDA rules essentially upgrades the property to LDA without the proper reduction in growth allocation. Expansion of existing non-residential uses is allowed, but the establishment of new uses conflicts with the basic intent of the Criteria, and the specific language in COMAR 14.15.02.05.C(5).

Item 7, omission of the full scope of grandfathering, is basic to the appropriate functioning of the Program. The Criteria provide flexibility for development on legal lots existing as of December 1, 1985, with the exception of two sections, COMAR 14.15.03, Water-dependent Facilities, and COMAR 14.15.09, Habitat Protection Areas. Deviations from these sections must be provided for by the other avenue for site-specific considerations, the variance procedure, which includes specific standards. Currently, this is not occurring in Anne Arundel County. Administrative variances could be considered, but all of the variance standards from COMAR 14.15.11 must be

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Page Three

applied and the Critical Area Commission staff should have an opportunity to review projects which propose development in the buffer, as is required by COMAR 14.20, the regulations on notification of project applications. The granting of a variance in the Critical Area should include any mitigation necessary to prevent adverse impacts to water quality and wildlife habitat. While the mandatory afforestation of at least 25 feet is a commendable provision in the County Program, it cannot be used to allow less than the protection mandated by the Criteria. Any problems potentially posed by the takings issue can be resolved through uniform application of a variance process. There is no legal justification for not meeting the minimum requirements of the Criteria, including the variance process. While the County may choose not to use Buffer Exemption Areas (BEAs) widely, the use of BEAs certainly allows the intent of the Critical Area Law to be carried out. BEAs do not exempt lots from meeting buffer requirements, as unfortunately implied by the name. They merely allow alternative provisions, a more flexible program, to be applied to meet the same goals, and require a determination that the existing buffer does not function as intended. Provisions contained in the County's modified buffer policy could certainly make up a portion of the buffer exemption program. However, application should be limited to identified areas where the buffer currently is not functioning as intended.

Item 8 is the omission of the information on environmental factors in applications for some types of water-dependent facilities, other than individual private piers. While these factors, such as flushing requirements, are listed in the County Program which is incorporated by reference in Bill 49-88, the ordinance language asks for the specific factors in some situations, and only for general "environmental impact" in others. The application of these standards to all situations becomes unclear and inconsistent because of the differences in submittal and approval requirements and the generality of language in these requirements. A landowner searching for submittal requirements is not clearly presented with the requirement for information, and this has been reflected in the lack of this information in some water-dependent facilities project expansions accepted by the County and sent to the Commission for review.

Item 9, requiring a single point of access in the buffer for community marinas, also is referenced as a requirement in program text, but is not carried out in the ordinance requirements for permit approval for community marinas. It should be included in ordinance language to clarify its applicability to proposed projects.

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Items 10, 11, and 12 also request clarification in the ordinance language for water-dependent facilities such as public beaches, research and education facilities, and fisheries facilities. The ordinance is basically silent, and it may be that the Program, by being more specific, could be thought to control. However, zoning ordinances typically prohibit uses not specifically approved for a zone, which would prevent the uses from occurring with the specified provisions, and it does not incorporate the relevant requirements for that use.

Item 14, adding the requirement for Soil Conservation and Water Quality (SCWQ) Plans to the ordinance, is needed to clarify this plan as a requirement and create a possible enforcement mechanism. The SCWQ Plan is the mechanism for implementing most of the agricultural requirements, so as long as it is clearly required in the zoning ordinance, the presence of the remainder of the agricultural element only in the appendices of the County's Critical Area Program (incorporated in Bill 49-88 by reference) should be sufficient to allow implementation and enforcement.

Item 15 concerns the omission of language on buffers for existing surface mining operations (e.g., sand and gravel mines). The County ordinance requires a 100-foot buffer for surface mining operations, but makes no reference to existing operations with intrusion already occurring in the buffer. While the language requiring a 100-foot buffer to the greatest extent possible for existing operations leaves substantial room for interpretation, it does raise an obligation to consider opportunities to establish a buffer if new or changed permits are needed.

Items 16 and 17 concern buffer expansion and exemption, respectively. The County ordinances require a 50 foot setback from the top of the slope for steep slopes adjacent to the buffer, which is entirely adequate in most circumstances. The Criteria require expansion for steep slopes adjacent to the buffer of 4 feet for every percent slope, which may result in a greater setback in some situations. The greater of the two setbacks should be able to be applied. Buffer Exemptions are provided for in Industrial Districts. The areas qualifying for Buffer Exemption, based on the buffer's current inability to function as intended by the Criteria, should be mapped to support the County's Buffer Exemption Program.

Item 18 concerns the omission of the tests for water-dependency or substantial economic impact for projects allowed to use the nontidal wetlands mitigation option. Although only the requirement for the 25-foot buffer to nontidal wetlands is included in the zoning and subdivision ordinances, the

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incorporation of the program by reference in Bill 49-88 should be sufficient to make the wetlands requirements in the program enforceable on applicable projects. Appendix G of the County Critical Area Program contains the procedural and substantive requirements for mitigation of nontidal wetlands disturbance, but incorporates only the tests that disturbance be unavoidable and necessary. The Criteria also require tests that the project in question be water-dependent or of substantial economic benefit. This should be included in the Appendix so that the County Program meets the minimum Criteria requirements. The County allowing selective tree-cutting in nontidal wetlands contradicts some existing State harvesting requirements (e.g., the MD Forestry Division's General Approval from the Critical Area Commission), so this built-in conflict should be eliminated.

Item 19 concerns the omission of protection requirements for a subset of Habitation Protection Areas, the non-forested HPAs. While the entire program is incorporated by reference, the exclusion of certain HPAs or protection zones in the ordinance suggests that these are not necessary for permit approval, as discussed above. HPAs should require protection whether forested or not.

Item 20 concerns standards for granting variances from Critical Area requirements. All of the findings identified in the Criteria should be applied for Critical Area variances, and the use of practical difficulties as a basis for granting a variance is not allowed in the Criteria. The "practical difficulties" basis represents different standards than "unwarranted hardship", which is permitted in the Criteria. The County ordinance currently allows either basis to be used for granting a variance.

Item 21, applying Critical Area review to all permits, is another issue fundamental to the viable functioning of the Critical Area Program. The failure to apply the Critical Area regulations to building permits for all but waterfront lots means that a substantial portion of the Critical Area is omitted from Program requirements. The distinction between waterfront and waterview lots has proved particularly troublesome because of the presence of the buffer on some "waterview" lots. The presence of a strip of community property only a few feet wide on the tax maps, which may in actuality be long eroded, has exempted certain landowners from Critical Area requirements and resulted in inequitable application of buffer regulations.

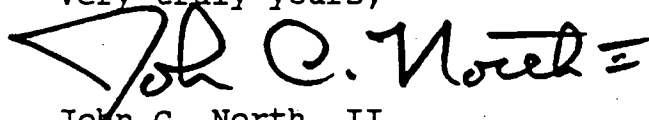
Item 22 concerns the exemption of subdivisions based on their presence on the wastewater treatment allocation waiting list. Such exemption was clearly not provided for within the Critical Area Law or Criteria. Subdivisions under common

Mrs. Cade
April 29, 1992
Page Six

ownership should be reconfigured to comply with the Critical Area Criteria insofar as possible, and the regulations for Habitat Protection Areas and Water-dependent Facilities should be fully applied. Although the County has developed policies for bringing these subdivisions into compliance insofar as possible, as intended by the Criteria, the language in Bill 49-88 appears to contradict this procedure.

I am sure you are aware of some of the problems stemming from discrepancies between the County's Critical Area Program and the Critical Area Law and Criteria. I hope that you will be able to utilize the Comprehensive Review process to correct the several problems discussed in this letter and render the County Program more clearly enforceable by the County staff. We will be glad to consider any additional changes which the County wishes to make as part of the Comprehensive Review. Please do not hesitate to call me to set up a meeting with Commission staff or the County review panel of Commission members.

Very truly yours,



John C. North, II
Chairman

JCN/abh

encl.

cc: Joe Elbrich
Elaine Peiffer
George Gay
Pat Pudelkewicz
Anne Hairston

JUDGE JOHN C. NORTH, II
CHAIRMAN
410 822-9047 OR 410-974-2418
410 820-5093 FAX

SARAH J. TAYLOR, PhD
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



WESTERN SHORE OFFICE
275 WEST STREET, SUITE 320
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

February 6, 1992

Mr. Michael Hoffman
Chairman
Anne Arundel Group of the
Sierra Club
P O Box 3620
Annapolis, Maryland 21403

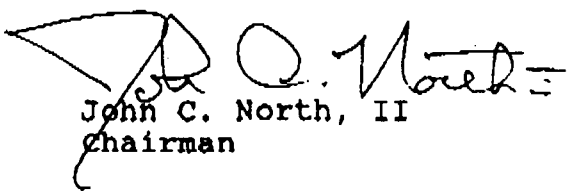
Dear Mr. Hoffman:

We received your letter regarding Anne Arundel County's approval of the Woods Landing II subdivision. We share your concerns with the deficiencies of the project regarding the 100-foot buffer, forest clearing, and density within the Limited Development Area, and have advised the County to apply these requirements fully. However, the language of Bill 49-88 1, the County's Critical Area Bill, exempts projects on the wastewater treatment allocation waiting list from the Bill and its requirements. The Woods Landing II subdivision falls in this category. The Critical Area Commission, whether or not they were aware of this language, approved the Bill as part of the County's Critical Area Program in June 1988. Because any action to overturn local decisions must be undertaken through the court system, it is difficult to file a workable appeal given the existing language. However, the situation with Woods Landing has triggered our concern over the grandfathering and exemption issues, and we are preparing to require changes to the County's approved Program. We expect that the issues, including the exemption for projects on the wastewater treatment allocation waiting list, will be on the agenda of the Commission meeting on March 4th 1992. This may not satisfactorily address your concerns about Woods Landing, but please be assured that we are trying to have the County's Critical Area Program modified so that it can fully implement the letter and the spirit of the Critical Area Law and Regulations.

Mr. Hoffman
February 6, 1992
Page Two

Thank you for your concern on this important issue. If you have further questions, please contact Ms. Anne Hairston on my staff.

Very truly yours,


John C. North, II
Chairman

JCN/ABH/jjd

cc: George E. H. Gay, Esq.
Dr. Sarah Taylor
Ms. Anne Hairston

BOARD OF APPEALS

PROTESTANTS

EXHIBIT # 3

NAME

WL

CASE

10-52A

DATE

4-15-92

STAFF REPORT
Critical Area Commission Meeting
March 4, 1992

ISSUE: Discussion of changes in the Anne Arundel County Critical Area Program

COMMISSION ACTION NEEDED: For information only

DISCUSSION: The Critical Area Commission approved the Anne Arundel County program in May, 1988 as complete and sufficient. However, experience with implementation of the regulations has revealed some problems, deficiencies, or interpretations that do not appear to meet the intended goals of the Critical Area Law and regulations. Discussions and correspondence between staffs have been occurring since late spring of 1989 with Anne Arundel County with regards to certain changes in the County's program. The presentation today is not meant to present the culmination of those discussions, but rather to inform the Commission of existing situations and to provide an opportunity to give guidance to Commission staff as to the most appropriate approach to take in continuing discussions and taking actions. There are some far-reaching policies involved in these issues, and it was felt that the Commission should be given an opportunity to discuss and guide staff efforts. It should also give the Commission a solid background in the problems and issues when action on proposed changes occurs in the future.

In May, 1989, Mr. Tom Osborne, then the director of the Anne Arundel County Office of Planning and Zoning, wrote a letter to Judge North indicating that the County intended to make some program changes, particularly in reference to variance provisions, language commonly misread or misinterpreted, and procedures for awarding growth allocation and map changes on the basis of mistake, in response to requests to address these issues. In July, 1989, Ren Serey, Chief of the Commission's Project Evaluation Division, requested Mr. Osborne to address discrepancies in the language or interpretation of grandfathering provisions. The procedures for growth allocation and mapping mistakes were developed by the County, submitted as a program amendment, and approved by the Commission. Other changes such as the variance language and grandfathering language which have been discussed as problems have not been presented as amendments.

The County's 4-year review of their Critical Area Program is due on October 22, 1992. Commission staff has completed a review of the County Program, and identified a comprehensive list of issues which are expected to be addressed at the time of Comprehensive Review. Preliminary discussions on those suggested changes started with a meeting last September with County staff. Since then, the County has sent a letter identifying where they consider that changes are needed and where the existing language

is thought sufficient. There are several issues which Commission staff considers to be of particular importance to address, whether through the 4-year review or otherwise: (1) Critical Area review for all permits in the Critical Area, (2) exemption of subdivisions placed on the wastewater treatment allocation waiting list, (3) grandfathering, and (4) environmental factors information for water-dependent facilities. Explanation of these issues follows.

(1) Currently, Critical Area review for building permits is required only on riparian property (County Council Bill 49-88, Section 2). Critical Area review is required for all subdivisions, variances, and special exceptions within the Critical Area, but for building permits, only riparian properties are specified. The lack of application of Critical Area regulations to building permits for all but waterfront lots means that a substantial portion of the Critical Area is omitted from program requirements. The distinction between waterfront and waterview (non-riparian) lots has proved particularly troublesome because of the close proximity of some "waterview" lots to tidal waters. The presence of a strip of community property only a few feet wide on the tax maps, which may in actuality be long eroded, has exempted certain landowners from Critical Area requirements, and resulted in inequitable application of Buffer regulations.

(2) Section 3 of County Council Bill 49-88, the County's Critical Area Bill, exempts certain subdivisions from the requirements of the bill based on their presence on the wastewater treatment allocation waiting list. Such exemption was clearly not provided for within the Critical Area Law or Criteria. Developments under common ownership should be reconfigured to comply with the Critical Area Criteria, per COMAR 14.15.02.07. The approval of the Woods Landing Subdivision, Section II, has illustrated the potential impact of this provision. While the County has worked to have the subdivision comply with the Critical Area criteria insofar as possible, and has required fees-in-lieu for forest clearing and avoidance of wetlands, the 100-foot buffer has not been required, and only a 50-foot buffer is being provided. Both lots and townhouse units are proposed within the 100-foot buffer. Woods Landing is mapped LDA, and consequently has substantial development potential; however, this development potential is lower than that proposed by the preliminary plat approved by the County prior to the adoption of the Critical Area Program. There are 12 other subdivisions on the wastewater treatment allocation waiting list on the Broadneck Peninsula alone; Critical Area designations are mostly LDA or IDA.

(3) The Anne Arundel County ordinances do not contain language to implement the intended scope of grandfathering in COMAR 14.15.02.07. Of particular importance is the omission of the last paragraph of the section, which states that nothing in

the grandfathering section may be interpreted as altering any requirements for development activities set out in COMAR 14.15.03, and 14.15.09, i.e., the Water-dependent Facilities requirements and the Habitat Protection Area requirements, which include the 100-foot Buffer. On lots existing as of December 1, 1985, Anne Arundel County ordinances require compliance with Critical Area regulations insofar as possible. Implementation of this clause allows structures in the buffer, nontidal wetlands, or other Habitat Protection Areas without a variance on waterfront lots less than 200 feet deep.

Inclusion of the intended scope of grandfathering is crucial to the appropriate functioning of the program. The Criteria provide flexibility for development on legal lots existing as of December 1, 1985, with the exception of Water-dependent Facilities and Habitat Protection Areas. For areas where the buffer is already predominantly developed, and cannot feasibly fulfill the specified functions of the Buffer, Buffer Exemption Areas and an associated mitigation policy/regulations may be established. Other deviations from these sections must be provided for by the other avenue for site-specific considerations, the variance procedure, which includes specific standards for allowing an exception. Currently, this is not occurring in Anne Arundel County. Administrative variances could be considered, but all of the variance standards from COMAR 14.15.11 must be applied and the Critical Area Commission staff should have an opportunity to review projects which propose development in the buffer, as is required by COMAR 14.20, the regulations on notification of project applications.

(4) Another omission is the lack of ordinance language requiring the environmental factors listed in COMAR 14.15.03.04 for certain water-dependent facilities (i.e., adequate flushing, minimizing impacts on submerged aquatic vegetation, shellfish beds, etc.). These environmental factors are contained in the W-2 zone language, but are not specified in the language for the maritime zones or any other zone that could support a community marina or other regulated water-dependent facility. Some information is required for special exceptions [Zoning 12-1-3(d)], and marine service facilities have a general requirement for appraisal of environmental impact [Zoning 12-230(b)(3)], but the environmental factors required by COMAR 14.15 are not specified. Requirements for information on the eight environmental factors should be placed so that they are applicable to every water-dependent facility, including expansions, other than individual private piers. These environmental factors are listed in the Critical Area Program document, which is incorporated in its entirety by reference in Bill 49-88. However, the ordinance language asks for the specific factors in some situations, and only for general "environmental impact" in others, which results in the required Critical Area information being submitted only where specifically

listed (or requested by the Commission). A landowner searching for submittal requirements is not clearly presented with the requirement for information, and this has been reflected in the lack of this information in some water-dependent facilities project expansions accepted by the County and sent to the Commission for review. The omission of the particular requirements results in implementation of COMAR 14.15.03 in conflict with the intent of the Criteria.

The Anne Arundel County Critical Area Program was approved by the Critical Area Commission May 18, 1988 and it became effective in August 22, 1988. Since then, various situations have arisen which appear contrary to the State Critical Area Criteria, but these situations have not been pursued through the legal avenues open to the Commission because of certain deficiencies or omissions in the County Ordinances, on which legal action would be based.

The Commission does have the authority to request changes in a local jurisdiction's program, and to have those changes presented as program amendments within 90 days. This authority is granted by Natural Resources Article §8-1809(L), as it was amended by HB1062, in circumstances where the Commission discovers a clear mistake, omission, or conflict with the Critical Area Law or Criteria. This clause grants considerable authority to the Commission, which makes it all the more important to use it wisely and with carefully considered deliberation.

STAFF CONTACT: Anne Hairston

STATE OF NEW YORK
BOARD OF APPEALS

EXHIBIT # 2

NAME WL

CASE BA10-92A

DATE 4-15-92

Table 1: Current Pollutant Loadings To The Little Magothy River in Pounds/Year

	Acres	Nitrogen	Phosphorus	Copper
Stormwater Loads:				
Developed Land ¹	787	5,198	718	74
Undeveloped Land ²	343	1,029	103	1
Atmospheric Deposition Into Little Magothy River ³	74	945	37	
	<u>1,204</u>	<u>7,172</u>	<u>858</u>	<u>75</u>

- 1 Estimates of stormwater loads from developed loads are based upon the loading equation presented in Schueler (1987).
- 2 Loads from undeveloped lands are based upon Correll (1982).
- 3 Atmospheric loads are based upon Lugbill (1990).

Jaworski (1981) stated that acceptable water quality conditions could be maintained in an estuary if nitrogen and phosphorus loadings remained at or below 5.4 and 0.75 grams/square meter/year, respectively. The Little Magothy River has a surface area of 74 acres or 300,000 square meters. The annual nutrient loads presented in Table 1 equal 3.3 million grams of nitrogen and 0.4 million grams of phosphorus. Thus the current nitrogen and phosphorus loadings to the Little Magothy River are respectively 11 and 1.3 grams/square meter/year, or twice the acceptable loading rate. When the acceptable rate is exceeded estuarine systems begin to exhibit excessive algal growth. The poor water clarity, excessive algal growth, and lack of submerged aquatic vegetation all point to over-enrichment with nutrients.

If more severe water quality problems are to be prevented, then nutrient loads to the Little Magothy River must not increase. Other wise dissolved oxygen deficiencies, fish mortalities, odors and other nuisance conditions may become common in the Little Magothy River.

STORMWATER IMPACT OF WOODS LANDING II

The applicant has proposed using nine structures to retain stormwater pollutants on the site. Seven of the structures are designed to treat stormwater through infiltration into the soil column. On average the infiltration measures will reduce nutrient loadings to the Little Magothy River by 50% (Schueler 1987). Copper loadings would be reduced by 70% (Schueler 1987). The other two structures are designed to attenuate the velocity and peak discharge of runoff. These two

INTRODUCTION

Community & Environmental Defense Services (CEDS) was retained by the Woods Landing Community Service Association, Inc. to assess the potential environmental effects of Woods Landing, Section 2.

The 31.16 acre site drains to the Little Magothy River. Plans prepared by the applicant show that 7.79 acres of the site will be covered by impervious materials. The plans also show that roughly 80% of the forest on the site will be cleared to within 50 feet of the Little Magothy River.

QUALITY OF THE LITTLE MAGOTHY RIVER

The Little Magothy River is currently stressed by excessive nutrient and sediment inputs. The stress is evidenced by several factors.

1. According to data provided by the Anne Arundel County Office of Planning & Zoning, the Little Magothy River has diminished clarity. Specifically, the Secchi disk depth readings ranged from 0.5 to 0.8 meters in 1988.
2. On January 24, 1992, CEDS sampled the bottom sediments of the Little Magothy River just off of the site of Woods Landing II. The bottom had a dense coating of a filamentous green algae. This condition is unusual and indicates nutrient over-enrichment.
3. Sediments collected during the January 24th survey were analyzed for the seeds produced by submerged aquatic vegetation (SAV). No seeds were found which demonstrates that SAV does not occur in this portion of the Little Magothy River.
4. The SAV atlases for the years 1984, 1986, 1987, and 1989 were reviewed (Orth et al. 1987a, 1987b, 1989, and 1990). The atlases do not show SAV beds at any location within the Little Magothy River system.
5. A comparison of 1933 and 1989 aerial photographs of the Little Magothy River shows that sedimentation has caused wetlands to encroach 100 to 200 yards at the head of the river and adjacent to the site of Woods Landing II.

Submerged aquatic vegetation are particularly sensitive to the effects of elevated levels of nutrient and sediment influx to an estuary (Orth and Moore 1983). SAV require water with a high degree of clarity. Waters with adequate clarity have a Secchi disk depth greater than 0.8 meters (Hurley 1991). The Secchi depth in the Little Magothy River is less than 0.8 meters. The lack of SAV in the river can be attributed to the diminished water clarity which is due to excessive algal growth combined with sediment inputs.

In Table 1, a summary is presented of current pollutant loadings to the Little Magothy River.

the Little Magothy as groundwater inflow (Correll 1982). In other words, the eight acres of woodland presently contributes 2.4 million of high quality inflow to the estuary each year. Development of the site will lower the quality of inflow, with the most critical loss occurring on the 2.5 acres of impervious surfacing that drains to the attenuation structures. In this case 0.9 million gallons of high-quality inflow will be degraded to an equal volume of pollutant-rich stormwater runoff.

If development were confined to those portions of the site which would drain to the seven infiltration trenches, then the stormwater impact upon the Little Magothy River would be reduced considerably. Such a reconfiguration of the site plans would also reduce imperviousness from 25% to 14%.

SOIL EROSION & SEDIMENT IMPACTS

The plans for Woods Landing II indicate that 80% of the existing forest will be removed. The most prevalent soil on the site, Mattapex, has an erodibility factor of 0.37. The Anne Arundel County Zoning Ordinance defines a highly erodible soil as one which exhibits an erodibility factor greater than 0.35 (Section 1-101(31A)). The Little Magothy River and adjacent wetlands are quite sensitive to the effects of excessive soil loss and sediment pollution.

The soil erosion rate on the 31.16 acre tract presently averages 2.5 tons/year. During the construction phase the erosion rate will increase to 521 tons/year. Limiting forest cover clearance to the 20% maximum permitted by critical areas regulations would reduce the soil erosion rate to 114 tons/year. These estimates are based upon the Universal Soil Loss Equation, which was developed by the U.S. Soil Conservation Service.

The measures shown on the approved erosion and sediment control plan will reduce soil loss from Woods Landing II by 50% (Schueler and Lugbill 1990). Significant impact upon aquatic resources will occur unless soil loss from a construction site is reduced by at least 90% (Klein, 1983). The 50-foot buffer proposed by the applicant will fail to provide the degree of water quality protection associated with the 100-foot buffer normally required for sites in the critical area.

CUMULATIVE IMPACTS

The Little Magothy River is presently over-enriched with nutrients. Woods Landing II will exacerbate the degree of enrichment. Development as proposed will also impact the river and saltmarsh through the toxic effects of copper entrained in untreated stormwater runoff. Limiting total imperviousness to 14%, shifting development to the better soils on the southwest half of the site, and increasing the buffer width to a minimum of 100 feet would substantially reduce nutrient and toxic inputs to the Little Magothy River. The 100 foot buffer would also serve to protect a mountain laurel which qualifies as the State champion.

attenuation structures cannot retain pollutants. The seven structures, known as infiltration trenches, will receive runoff from two-thirds of the proposed impervious surfaces. The plans indicate that runoff from the rear half of 75 of the roof tops will by-pass the control structures. The only protection for runoff from these roof tops will be the diminished buffer.

In Table 2, a comparison is presented of the nutrient and copper loadings from the site under current land use (woodland), Woods Landing II as proposed, and the loadings that would occur if the project fully complied with critical areas criteria. The proposed condition accounts for pollutants retained in the seven infiltration trenches. Thus Woods Landing II will result in a tripling of nutrient loadings and a 35 fold increase in copper loadings to the Little Magothy River.

Table 2: Comparison of Pollutant Loadings from Woods Landing II

LAND USE	NITROGEN	PHOSPHORUS	COPPER
	(P o u n d s P e r Y e a r)		
Existing	45	6	0.06
Proposed	186	26	2.3
Compliance With Critical Areas	77	11	0.7

If development of the site were limited to no more than 15% impervious area and structures were confined to the best soils on the site, then pollutant loadings would be reduced to the levels corresponding to "Compliance With Critical Areas" in Table 2.

The Maryland water quality standard for copper in estuarine waters is 2.9 micrograms per liter (ug/l) (COMAR 26.08.04). The copper concentration in stormwater runoff will attain 114 ug/l (Schueler 1987). The seven infiltration trenches are generally effective in mitigating copper impacts. The copper released from the two attenuation trenches will cause a violation of the water quality standard over 2.5 acres of the Little Magothy River. Furthermore, the two attenuation trenches are designed to discharge the untreated stormwater into tidal wetlands. The wetland vegetation is sensitive to the toxic effects of copper associated with poorly treated stormwater runoff (Waddell and Kraus, 1990).

Woods Landing II, as proposed, will cover 7.79 acres of land with impervious materials. Much of this land is presently wooded. On average 23% to 40% of the rain falling upon the woodlands would soak into the earth and enter

EVALUATION OF WOODS LANDING SECTION 2 STORMWATER MANAGEMENT PLANS AND WATER QUALITY IMPACTS

1.0 INTRODUCTION

Dames & Moore was retained by the Woods Landing Community Service Association to provide an analysis of the water quality impacts of the proposed Woods Landing Section 2 development plans. In completion of this task, Dames & Moore reviewed the Woods Landing Section 2 Storm Drain and Stormwater Management Plans (8 sheets) designed by Anarex, Inc. The plans reviewed were marked as received by Anne Arundel County Development Services on July 17, 1991. In addition, we reviewed Woods Landing Section 2 Stormwater Management Computations, also prepared by Anarex, Inc. with the same date. Finally, we reviewed the document entitled *An Assessment of the Potential Environmental Effects of Woods Landing II*, prepared by Richard D. Klein, Community and Environmental Defense Services, dated April 15, 1992.

2.0 EVALUATION OF ANAREX STORMWATER MANAGEMENT PLANS

2.1 ANALYSIS

Dames & Moore's evaluation of the infiltration practices proposed for Woods Landing Section 2 raised several significant concerns:

1. Field tests of soil infiltration rates were not reported. Trenches are not practical in soils with infiltration rates of less than 0.5 inches per hour. The U.S. Soil Conservation Service (1973) provides an infiltration rate range of 0.2 to 2.0 inches per hour for Mattapex silt loam, the predominant onsite soil. Therefore, an unknown number of trench locations at the proposed project may not be suitable.
2. The depths to groundwater appear to underestimate the depth to the seasonal high water table. The distance from the bottom of the infiltration trenches to the seasonal high water table should be a minimum of 2 to 4 feet. Otherwise, the pollutant removal capabilities of the trenches will be less than their design capabilities.

The depths to groundwater used in the trench designs appear to have been determined in January 1991. Seasonal high water tables typically occur during the months of March through May. Furthermore, rainfall data from BWI (see Attachment 1) indicates that rainfall for the five months preceding January 1991 was 20 percent below normal. Therefore, the depth to groundwater during January 1991 may have been deeper than normal and not representative of seasonal high water. The U.S. Soil Conservation Service

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(1973) reports a depth to seasonal high water table for Mattapex silt loam of 1.5 to 2.5 feet. Two of the seven proposed trenches have distances between the trench bottoms and groundwater of 4.5 feet or less. If the depth to seasonal high water table is underestimated by only 0.5 to 2.5, water quality control benefits will decrease and groundwater contamination may occur. Annual fluctuations in groundwater depth of approximately 5 feet would not be unexpected.

4. Infiltration trenches have a poor success rate. A MWCOC study (Schueler, 1992) cited 50 percent failure rate within 5 years. A copy of relevant sections of this report are provided in Attachment 2. MWCOC estimates a design life span of less than 5 years.
5. The infiltration trenches as designed do not incorporate grassed or forested buffer strips to filter sediments from stormwater prior to entry to the infiltration trench. Therefore, the trenches will most likely clog and fail in a short period of time.

2.2 Summary of Analysis

The infiltration trenches will most likely fail since the design does not incorporate pretreatment to remove sediments and does not appear to have utilized accurate seasonal high water table data. Regardless, even properly designed infiltration trenches will fail or will begin failing within five years. Therefore, it would be reasonable to assume that water quality controls at the site will be nonexistent within 5 to 10 years.

It might be said that the pollutant loads from this site are small relative to overall loads to the Little Magothy River or the Magothy River, and therefore stormwater management is not necessary. The problem with this approach is that the Chesapeake Bay can only be restored one small step at a time and everyone has to do their part.

3.0 ASSESSMENT OF KLEIN REPORT

The Klein report was discussed and presented during the May 4, 1992 hearing on Woods Landing, Section 2 before the Anne Arundel County Board of Appeals. We feel that the assessment of water quality conditions and stormwater pollutant loads presented in the Klein report are reasonable. The section entitled *Quality of the Little Magothy River* is consistent with our understanding of the Upper Magothy River. Dames & Moore is familiar with water quality conditions based on work conducted for Anne Arundel County while preparing the County Dredging Master Plan. Also, Dames & Moore reviewed the Magothy River Comprehensive Watershed Management Master Plan Study (Engineering Technology Associates, March 1987).

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Specifically, Dames & Moore reviewed Table 1 of the Klein report and feel that the calculated nutrient pollutant loads are reasonable. Dames & Moore calculated similar unit area nutrient pollutant loads for Rock Creek, an Anne Arundel County watershed, based on stormwater monitoring data performed by Anne Arundel County (Dames & Moore, 1988).

Dames & Moore also agrees with the conclusion on page 4 of the Klein report that decreasing the imperviousness of the development will improve water quality (i.e., retaining more existing forest land). The figure in Attachment 3 illustrates that total phosphorus export rates decrease with decreasing imperviousness. This data is from six watersheds (five are in Anne Arundel County) that have been monitored for stormwater runoff pollutant loads. Backup data for the figure are attached to the figure.

Studies have shown that forests and forest buffer strips are effective in reducing runoff and filtering pollutants from urban runoff and groundwater with elevated nutrient concentrations. While studies do not conclusively demonstrate the exact incremental benefit for increasing buffer widths, it is our opinion that water quality impacts from Woods Landing Section 2 would be less if the 100-foot critical area buffer incorporated into development plans. Water quality impacts would also be lessened if a larger percentage of the existing forest at the site is retained.

References

- Dames & Moore, 1988. *Rock Creek Water Quality Evaluation*, prepared for Anne Arundel Department of Public Works, Annapolis, Maryland.
- Schueler, T.R., P.A. Kumble, and M.A. Heraty. 1992. *A Current Assessment of Urban Best Management Practices - Techniques for Reducing Non-Point Source Pollution in the Coastal Zone*, prepared for the United States Environmental Protection Agency, Washington, DC.
- United States Soil Conservation Service, 1973. *Soil Survey of Anne Arundel County, Maryland*, in cooperation with the Maryland Agricultural Experiment Station, College Park, Maryland.

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ANNE ARUNDEL COUNTY
BOARD OF APPEALS

Testimony of the Anne Arundel Group, Sierra Club
Regarding Woods Landing II Subdivision
presented by
Earl H. Bradley Jr.

NAME

W.L.

PA10-92A

EXHIBIT # 13

Although I was involved professionally in the development of the Program Development Criteria which local jurisdictions were to use in development of their Critical Area Programs, was Program Development Director for Harford County's Critical Area Program, and participated in the review of proposed local Critical Area Programs regarding their adequacy, I am here today on a personal basis, representing the Anne Arundel Group, Sierra Club. 8-18-92

The Group is opposed to Anne Arundel County's approval of Woods Landing II at its proposed density and in its proposed configuration for several reasons.

First, we believe, as previously stated by a representative of the Critical Area Commission and noted in an article in the Commission's newsletter and in a letter to the County from the Commission (copies of which are attached), that the County's grandfathering of projects in general, and those on the water and sewer allocation list in particular, is not consistent with the provisions of the Critical Area Program Development Criteria relating to grandfathering (COMAR 14.15.02.07). Furthermore, the provision of Bill No. 49-88 that the County asserts grandfathers Woods Landing II (Section 3 (4) on p. 75 of the bill) in actuality does not apply to Woods Landing II because it refers to only to "proposed subdivisions that were placed on the waiting list for a water or wastewater allocation that have complied with the provisions of Bills No. 42-86 or 90-86." No action was taken on Woods Landing II in accordance with the provisions of those bills.

Second, it should be noted that the County submitted as parts of its Critical Area Program for approval by the Critical Area Commission two other components: (i) a Critical Area Program describing in text the various elements of the Program, and (ii) maps delineating the various land use designations into which the County's Critical Area was to be divided: Resource Conservation Areas (RCA), Limited Development Areas (LDA), and Intensely Developed Areas (IDA). The portion of the Critical Area in which Woods Landing II is proposed was mapped as LDA (see attached excerpt). That designation means that the density of existing development or that which would occur in the future, is not to exceed 4 units/acre. The proposed density of Woods Landing II of over 150 units on 32 acres exceeds that density and thus is contrary to the maps submitted to the Critical Area Commission as part of the County's Critical Area Program.

Third, even if Woods Landing could be considered as grandfathered, its present configuration can not be considered as meeting the County's commitments that such developments would comply with its Critical Area Program's requirements insofar as possible. In addition to exceeding the allowable density for the LDA designation

Shown on the land use designation maps, Woods LANDING II does not even comply with the mandatory provisions of COMAR 14.15.02.07.D relating to the Protection of Habitat Protection Areas (COMAR 14.15.09) regardless of whether a project is grandfathered or not, much less attempting to address the other requirements of COMAR 14.15.02 to the greatest extent possible.

Several parts of COMAR 14.15.09 are pertinent to Woods Landing II. First, a natural buffer of at least one hundred feet in width must be maintained adjacent to tidal waters, tidal wetlands, and tributary streams. (The importance of maintaining such a buffer is not just to mitigate the impacts of surface runoff as has been previously testified, but, equally as important, to remove nutrient loadings in groundwater flows and to provide shoreland plant and wildlife habitat). Second, rare, threatened and endangered species and their habitat must be protected. Third, nontidal wetlands and an adjacent 25 foot buffer are to be left undisturbed. Fourth, riparian forest areas, defined as those relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands and the Bay shore, are to be protected and conserved by developing management programs that have as their objective conserving the wildlife that inhabit or use the area. Suggested management measures include cluster development and developing along the edge of such areas to maintain their integrity.

Finally, the proposed amount of impervious surface significantly exceeds the 15% allowed by State law, which presumably takes precedence over local laws.

Thus, we urge you to overturn the County's approval of Wood's Landing II and require its reconfiguration in a more environmentally sensitive manner with less density, less impervious surface, greater forest cover retention, and an expanded natural buffer adjacent to the Little Magothy River, its tidal wetlands, and its tributary streams.

BEFORE THE ANNE ARUNDEL COUNTY BOARD OF APPEALS

In the matter of: :

WOODS LANDING #2 :
JOINT VENTURE :

CASE NO.: BA 10-92A

April 15, 1992

Pursuant to notice, the above-entitled
hearing was held before the ANNE ARUNDEL COUNTY BOARD
OF APPEALS, BARBARA HALE, CHAIRPERSON, commencing at
2:49 p.m., there being present:

BOARD MEMBERS PRESENT:

JOSEPH A. JOHNSON
WILLIAM C. EDMONSTON, SR.
DAVID M. SCHAFER
F. GEORGE DEURINGER
JOHN W. BORING
ANTHONY V. LAMARTINA
P. TYSON BENNETT, Counsel to the Board

ON BEHALF OF THE APPLICANT/DEVELOPER, WOODS LANDING
#2 JOINT VENTURE:

HARRY BLUMENTHAL, ESQUIRE

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ON BEHALF OF THE PROTESTANTS, WOODS LANDING COMMUNITY
SERVICE ASSOCIATION, INC., and STEVEN AND BONNIE
TREAT, and ALBERT AND BECKY KUHLE:

JOHN MURRAY, ESQUIRE

ON BEHALF OF ANNE ARUNDEL COUNTY:

JAMIE BAER, ESQUIRE

ON BEHALF OF SPENCER P. ELLIS:

RANDALL E. GOFF, ESQUIRE

REPORTED BY: ELAINE REICHENBERG, NOTARY PUBLIC

- - -

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P R O C E E D I N G S

CHAIRPERSON HALE: I would like to go on the record for a moment. I think there are some preliminaries we can take care of while we are waiting for the rest of the Board members -- the other Board member to come and our attorney. They don't really have to be here until the sworn testimony begins.

I understand we have a procedure new to the Board of Appeals today, so we might work through some of that, so that everyone understands how we're going to operate.

Let me ask first, is anyone going to be bringing a motion to dismiss?

MR. GOFF: A motion to dismiss a party.

CHAIRPERSON HALE: Well, then we better wait to open until our attorney gets here. Thank you. We will wait.

(Whereupon, there was a brief recess.)

CHAIRPERSON HALE: Good afternoon, and our apologies for the delay.

The Anne Arundel County Board of Appeals is

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1 convened this 15th day of April, 1992, to hear Case
2 Number BA 10-92A, Woods Landing #2 Joint Venture, an
3 appeal from an administrative decision of the Office of
4 Planning and Zoning, granting approval of Subdivision
5 Number 73-519 and Project Number 91-065 for Woods
6 Landing, Section Two, Plats one through three, on
7 property located in part on the south side of Woods
8 Landing Drive and in part at the west end of Woods
9 Landing Drive, and bounding the southern end of the
10 Little Magothy River, Annapolis.

11 Before I go on, I understand we have a new
12 situation for the Board today -- there are four
13 proposed parties in this hearing; am I correct?

14 Will the counsel present identify themselves
15 for the record, please?

16 MR. GOFF: I'm Randall E. Goff. I'm here for
17 Spencer P. Ellis, who is an individual member of Woods
18 Landing Community Association, Inc.

19 MR. BLUMENTHAL: My name is Harry Blumenthal.
20 I'm the attorney for the applicants, who -- and the
21 developers, who have received subdivision approval from

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1 which an appeal was filed by a community association
2 and two individuals.

3 MR. MURRAY: My name is John Murray and I
4 represent the community association, and by way of
5 brief correction, two couples -- four individuals.

6 MS. BAER: My name is Jamie Baer. I'm here
7 on behalf of Anne Arundel County and its various
8 departments and offices.

9 CHAIRPERSON HALE: I understand there is a
10 motion. May we hear the motion?

11 MR. GOFF: Yes, ma'am. My name is Randall E.
12 Goff. I know you have a long afternoon ahead of you,
13 and I'll try to be relatively brief.

14 As I indicated earlier, I'm here representing
15 an individual, Spencer P. Ellis. Mr. Ellis was a
16 member of the original Board of Directors of Woods
17 Landing Community Association, Inc. And in addition to
18 that, he was its president for the first three years.

19 On his behalf -- he's here, prepared to
20 testify, with regard to the intent of the community
21 association.

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1 But with regard to the preliminary motion, I
2 would move, pursuant to Rule 3-104(A)(1) of the rules
3 and regulations of the Board, to dismiss the case, or
4 to dismiss Woods Landing Community Association, Inc. as
5 a party to this case for a lack of standing.

6 There is currently a case pending in the
7 Circuit Court before Anne Arundel County, an ex parte
8 motion was made to enjoin Woods Landing from pursuing
9 this appeal, which was denied as an ex parte
10 injunction. The current injunction proceeding is still
11 on hold, pending a hearing date.

12 I have before me today a memorandum in
13 support of opposition to the notice of appeal that was
14 filed by the Board, by Woods Landing Community
15 Association, to dismiss that. Our basic contention is
16 that pursuant to the articles of incorporation that
17 established Woods Landing Community Association, Inc.,
18 and its by-laws, and the declaration which granted the
19 association the powers to maintain, in essence, the
20 community property, and the community facilities, that
21 it's beyond the scope of the authority of Woods Landing

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1 Community Association, Inc. to pursue an appeal of an
2 adjacent subdivision in which they have no interest.

3 Basically, the articles of incorporation do
4 provide that the community association is to acquire,
5 and to own, and to provide for the maintenance,
6 operation, and management of certain open spaces and
7 other common areas and community facilities located
8 within a certain residential community in Anne Arundel
9 County, Maryland, known as Woods Landing.

10 In addition to that, their declaration
11 provides that -- that it was to create an association
12 to which should be delegated and assigned the powers
13 and duties of maintaining and administering the common
14 areas and community facilities, administering and
15 enforcing the within covenants and regulations, and
16 collecting and disbursing the assessments and charges.

17 It is Mr. Ellis' contention that the
18 association was established to do just that, to provide
19 for the maintenance, to cut the lawns, to make sure
20 adequate lighting facilities are there, to establish
21 architectural control within the community.

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1 It is, in its very essence, simply a
2 homeowner's association. The homeowner's association
3 does own certain land, common areas, within the Woods
4 Landing community itself.

5 However, there is nothing within the articles
6 of incorporation, the by-laws, and the declaration
7 which empowers the Board of Directors to go out and
8 pursue its appeal. And as I indicated, Mr. Ellis is
9 here to testify as to the intent of the community
10 association when it was established.

11 The community association has spent
12 substantial moneys pursuing this appeal in legal
13 expenses, consulting expenses, surveying expenses, and
14 what not, and it's Mr. Ellis' contention that even
15 given the fact that they own land, that the articles
16 which established it do not allow it to pursue an
17 appeal of an adjacent subdivision.

18 CHAIRPERSON HALE: Mr. Blumenthal?

19 Have any of the other attorneys received
20 notice, prior to today, of this appeal? Anything of
21 this motion? Anything in writing?

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1 MR. MURRAY: Not prior to today.

2 MS. BAER: I received a copy today.

3 CHAIRPERSON HALE: Today?

4 MR. BLUMENTHAL: Today.

5 CHAIRPERSON HALE: Mr. Murray, will you go
6 next, please.

7 MR. MURRAY: Certainly. Members of the
8 Board, this is my first opportunity to appear before
9 you and I appreciate that.

10 At least as I understand the concept of
11 standing, as Mr. Goff's motion was just articulated,
12 you do not have before you an objection to standing.
13 You have, in fact, before you an objection to one of my
14 clients, that is the community association, which is a
15 corporation's authority to participate in this appeal.

16 That is a matter which is a legal matter and
17 which is presently pending before the Circuit Court of
18 Anne Arundel County.

19 I see nothing in your rules, nor am I
20 familiar with anything generally under Article 66B,
21 which would suggest that the Board of Appeals has

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1 authority or jurisdiction to interpret by-laws and
2 articles of incorporation of a corporation, and to
3 adjudicate whether it has the authority to do or not do
4 something. That's the essence of this motion.

5 Standing, as I'm sure you all are aware in
6 other contexts, has to do with whether the individual,
7 or the party, as in this case, Woods Landing Community
8 Association, has an interest in the issue before the
9 Board.

10 Mr. Goff admitted that Woods Landing
11 Community Association owns real estate. It's not just
12 a community association which is responsible for
13 dealing with relatively minor community activities.
14 Rather, it has a real interest in real estate, like any
15 other owner. This real estate is adjacent to the
16 development which it opposes. It has an interest in
17 making sure that the neighborhood has attributes which
18 it considers to be better than worse.

19 So from a standing point of view, I don't
20 think there is any question whatsoever that Woods
21 Landing has standing.

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1 I would also call your attention, should you
2 care to be interested in the language of the articles
3 of incorporation, that the argument fails even on its
4 merits. The quote in the motion that I've just been
5 provided with says that the community association is
6 authorized to, among other things, acquire, own, and
7 provide for the maintenance, operation, and management
8 of certain open spaces and other common areas, and
9 community facilities, et cetera, et cetera. And to
10 exercise certain other functions with respect to the
11 residential and other property located therein, and to
12 engage in conduct, and carry on any other lawful
13 purposes or business, and to do any other thing that,
14 in the judgment of the Board of the Directors may be
15 deemed to be calculated to effectuate or facilitate the
16 purposes or business of the corporation, or to enhance
17 the value of its property.

18 What could be more appropriate, given that
19 broad grant of powers to this particular community
20 association, a corporation, than to object to a
21 development immediately adjacent to its own real

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1 estate, which it finds objectionable for any reason.

2 In conclusion, I suggest that its clear that
3 the Board should deny this motion on the grounds:

4 (a) It really isn't a motion for standing
5 and,

6 (b) Even if you consider it is such, it
7 ought to fail on its own weight.

8 Thank you.

9 CHAIRPERSON HALE: Mr. Blumenthal?

10 MR. BLUMENTHAL: Madam Chairman, and members
11 of the Board. I have no independent knowledge of the
12 merits of the motion before you. It is not the reason
13 why I, or my clients, are here today. And, therefore,
14 I have absolutely nothing to comment upon, one way or
15 another.

16 CHAIRPERSON HALE: Ms. Baer?

17 MS. BAER: Madam Chairman, and members of the
18 Board. The county takes no position. We're in a
19 similar situation. We are not familiar with the
20 articles of incorporation and we are not personally
21 familiar with the running of the association. So we

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1 are -- we don't know enough to ask the right questions.

2 CHAIRPERSON HALE: We're going to go off the
3 record and discuss the motion.

4 Mr. Goff, do you want to respond to any of
5 those comments?

6 MR. GOFF: Yes. Thank you. I'll be brief.

7 First, I think it would be ludicrous for me
8 to allege that the community didn't have any real
9 property out there.

10 CHAIRPERSON HALE: I'm sorry. I can't hear.

11 MR. GOFF: First, I think it would be
12 ludicrous for me to allege that the community didn't
13 have any real property out there. They do own the
14 common areas.

15 And I still feel that they fail to meet the
16 standing requirements because they have no interest.

17 If you take a look at what's alleged in the
18 notice of appeal, they are alleging violations of
19 certain grandfathering provisions, alleging the
20 adequacy of public facilities, and in essence alleging
21 a failure to meet critical area requirements.

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1 I don't believe that the community
2 association, as owners of the common area, have
3 standing to bring an action for failure of those
4 particular items that they are alleging in the notice
5 of appeal.

6 Secondly, you have to read the entire
7 articles of incorporation, declaration, and by-laws, in
8 their context. And those broad powers to carry out any
9 of the foregoing mentioned powers, or to promote its
10 business, all refer back to the fact that it's a
11 homeowner's association. It's got to accomplish
12 certain things in order to maintain that land.

13 And I would submit to you that that language
14 is designed to go back to the fact that it was
15 specifically empowered to be a homeowner's association
16 and once again, Mr. Ellis is here to testify, if you so
17 desire, as to the intent of the corporation when it was
18 originally established.

19 CHAIRPERSON HALE: The Board will take a
20 break.

21 (Whereupon, there was a discussion off

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1 the record.)

2 CHAIRPERSON HALE: We'll go back on the
3 record.

4 The Board considered the motion and feels it
5 does not have sufficient merit and there was a
6 unanimous vote to deny the motion.

7 MR. GOFF: Could I submit the memorandum for
8 the record?

9 MR. MURRAY: No objection.

10 CHAIRPERSON HALE: You can submit it. Ellis
11 Exhibit Number 1 will be the memorandum.

12 (Whereupon, the document was marked for
13 identification Ellis Exhibit No. 1 and received in
14 evidence.)

15 CHAIRPERSON HALE: Evidence will be presented
16 in the following order. First, the petitioner; second,
17 the protestant; third, the county; and fourth, Ellis.
18 Then rebuttal testimony in the same order. And then
19 finally, any other proponents or protestants who wish
20 to testify, but have not previously done so.

21 For purposes of administering this hearing,

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1 we will identify the parties to this appeal as follows.
2 Applicants, Woods Landing #2 Joint Venture;
3 Protestants, Woods Landing Community Service
4 Association -- Mr. Goff, are you continuing?

5 MR. GOFF: Excuse me, ma'am.

6 CHAIRPERSON HALE: Are you continuing to
7 participate, or --

8 MR. GOFF: No, ma'am. We were just simply
9 here to file the motion.

10 (Whereupon, counsel left the hearing.)

11 CHAIRPERSON HALE: Then I must correct the
12 record. Thank you. Then I must correct the record.

13 Evidence will be presented in the usual order
14 of the petitioner, protestants, and county. Delete,
15 please, Mr. Ellis.

16 Protestants, Woods Landing Community Service
17 Association, Inc., Steven and Bonnie Treat, and Albert
18 and Betty Kuhle.

19 County, Anne Arundel County.

20 Are those representing the parties to this
21 appeal ready to proceed?

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1 MR. BLUMENTHAL: Yes.

2 MR. MURRAY: Yes.

3 CHAIRPERSON HALE: We will begin with opening
4 statements. Mr. Blumenthal.

5 MR. BLUMENTHAL: Madam Chairman, and members
6 of the Board. I represent the petitioners in this case
7 before you this afternoon.

8 The petitioners started on the subdivision
9 process in 1983. The testimony will show that in
10 October of 1983, the submittal for a sketch subdivision
11 approval for the development of the subdivision now
12 known as Woods Landing, Section 2, was submitted to
13 Anne Arundel County.

14 The evidence will also indicate that in 1984,
15 the preliminary subdivision, which may have been the
16 same as sketch -- I'm not certain. The rules were
17 different then -- was approved by Anne Arundel County.

18 But, thereafter, due to a sewer moratorium on
19 the Broadneck Peninsula, this subdivision, together
20 with numerous others, was placed on a waiting list,
21 ready to be recorded, but for the advent of public

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1 facilities. This is at a time prior to the allocation
2 procedure in Anne Arundel County. In fact, the Board
3 members may recall, and I think the evidence will
4 indicate, that it was the moratorium on Broadneck which
5 helped implement the sewer allocation procedure in Anne
6 Arundel County.

7 The evidence will then indicate to you that,
8 in 1989, Anne Arundel County lifted the sewer
9 moratorium and advised those on the waiting list to
10 proceed, which the petitioners did.

11 The evidence, the documents that we will
12 submit, will indicate to you that, in fact, the
13 petitioners gave to the Anne Arundel County operating
14 departments what those departments requested, what they
15 required, and as a result, the subdivision plat, known
16 as Woods Landing, Section 2, was approved in December
17 of 1991.

18 In January of 1992, the appeal, which is
19 before you today, was filed by the Woods Landing
20 Community Association, Steven and Bonnie Treat, and
21 Albert and Becky Kuhle.

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1 The reasons for their appeal are set forth on
2 an addendum filed by their counsel. And those reasons
3 are, for the most part, statutory interpretation
4 reasons.

5 It is the contention of the protestants that
6 Anne Arundel County's laws, applicable to
7 grandfathering provisions, are inconsistent with state
8 law, or state criteria, and therefore are invalid.

9 It is the contention of the protestants that
10 the grandfathering provisions enacted by Anne Arundel
11 County, I'm assuming, predicated on the assumption that
12 maybe they aren't correct, have nevertheless been
13 misapplied, and therefore the subdivision is invalid.

14 The protestants also have contended that the
15 developer, the petitioners, has not been made to comply
16 with the critical area requirement of "insofar as
17 possible," as required by the local critical area
18 program. Again, I'm assuming that is predicated on the
19 assumption, arguendo, that the critical area program,
20 the local one, is valid.

21 There are also allegations by the protestants

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1 of inadequate public facilities and such other matters
2 as will be presented at this hearing.

3 As the Board members know, there is no
4 pretrial discovery in matters such as these before the
5 Board, so I merely have these stated, enumerated
6 concerns upon which to attempt to predicate the
7 evidence before this Board.

8 I submit to you that the evidence today and
9 the applicable law, of which I will ask you to take
10 judicial notice, and which will be argued in closing
11 argument, will indicate to you that Anne Arundel County
12 has adopted a critical area program that was approved
13 by the State Critical Area Commission, and then
14 adopted, as approved, by the Anne Arundel County
15 Council, that that is the law of the land and the law
16 of this case. There is no other applicable law to this
17 case.

18 Anne Arundel County's critical areas law is
19 the only law upon which this county can now approve or
20 disapprove, and this Board rule, upon such approval or
21 disapprovals.

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1 The evidence and the applicable law will
2 indicate to you that, in fact, this is not a matter of
3 grandfathering, and is not a matter of complying,
4 insofar as possible, because the evidence and the law
5 will indicate to you that those provisions are only
6 applicable to legally subdivided lots.

7 The evidence will indicate that what is
8 before you today are not lots which are legally
9 subdivided. They are the lots that were put on a
10 waiting list, prior to subdivision, and were never
11 legally subdivided.

12 And the evidence and the law will indicate to
13 this Board that Anne Arundel County, in its adopted
14 critical area program, exempted this subdivision from
15 all critical area legislation, this subdivision, and
16 numerous other ones like it that were on the waiting
17 list for sewer. The evidence will indicate that that
18 is the law of this case.

19 We will introduce evidence to you to
20 demonstrate that to the best of the petitioner's
21 knowledge, there are adequate facilities that were

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1 approved by the regulatory agencies of Anne Arundel
2 County.

3 In fact, this appeal is not necessarily an
4 appeal against the petitioners, although it has that
5 effect. It is an appeal against the Anne Arundel
6 County program, as it has been enacted.

7 And I suggest to you that this is a case
8 which is probably going to be more simplistic in the
9 testimony than perhaps the numbers of people in this
10 auditorium would indicate, because it is not a case of
11 whether the Board members, or anyone else, likes or
12 dislikes the subdivision which has been approved.

13 What this Board has to determine, from the
14 evidence it will hear today, did Anne Arundel County
15 apply its laws properly and, if so, this subdivision
16 was properly approved. If not, then it wasn't. Thank
17 you.

18 CHAIRPERSON HALE: Mr. Murray?

19 MR. MURRAY: Thank you. As mentioned briefly
20 earlier, I represent the protestants, the Woods Landing
21 Community Association, Mr. and Mrs. Treat, and Mr. and

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1 Mrs. Kuhle.

2 As Mr. Blumenthal indicated, much of this
3 case turns on legal interpretations. But the case has
4 significance well beyond the technical, because the
5 reasons for those legal provisions in the first
6 instance were to achieve a purpose, and that is to
7 enhance and preserve water quality in the Chesapeake
8 Bay and its tributaries.

9 We are not here today just to have a
10 technical debate, but rather to talk about a matter of
11 consequence, within the framework of what is the law,
12 and is it being properly applied.

13 The hallmark of the critical area program is
14 water quality, and you will hear testimony today about
15 the several criteria in the critical area program,
16 specifically the 100 foot buffer, the percentage of
17 trees that may be cut in a critical area, impervious
18 surface, and housing density.

19 You will hear that the state adopted, as part
20 of its critical area program, a provision allowing for
21 grandfathering for limited exemption from some of its

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1 provisions, specifically the provision regarding
2 housing density.

3 You will see, when you are directed to the
4 applicable sections of the law, that it specifically
5 did not extend to other criteria, such as tree cutting,
6 impervious surface, and the buffer.

7 Each jurisdiction fronting on the Bay or its
8 tributaries, to my knowledge, has adopted a local
9 program. That local program is required by state law
10 to comply with the state criteria.

11 Anne Arundel County's program, you will see,
12 contains a broad and vague provision regarding
13 grandfathering of certain land.

14 We will contend that that exemption may not
15 apply at all to this property. But even that -- even
16 if it does, it can only be extended to housing density,
17 and not all of the other critical area criteria.

18 Moreover, both the state code and the local
19 program provide that even if this grandfathering
20 concept does apply, the land subject to the
21 grandfathering must, nonetheless, be developed in a

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1 manner that complies with the criteria "insofar as
2 possible," without defining what that concept really
3 means.

4 The Critical Area Commission has identified
5 this issue, this interpretation and application issue,
6 as a problem. And you'll receive evidence on that
7 point.

8 The Little Magothy River is the water body
9 that is specifically at issue in this proceeding. It
10 fronts on two sides of the property proposed for
11 development.

12 You'll hear that the buffer that is supposed
13 to apply in these cases, 100 feet, and that the
14 developer's plan provides for 50 feet.

15 You'll hear that the tree clearing percentage
16 is supposed to be limited to 20 percent, and that the
17 developer's plan provides for cutting of a very mature
18 and beautiful stand of woods over 60 percent.

19 You'll hear that the standard for impervious
20 surface is 15 percent and that this plan calls for 28
21 percent or more.

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1 You will hear that the negative impacts of
2 these variations from the critical area criteria on the
3 Little Magothy River are significant and profound, and
4 that the protestants are concerned that this particular
5 intensity of development, in its particular location,
6 in its particular configuration, will have substantial
7 negative consequences on the Little Magothy River.

8 This is perhaps a matter that could have been
9 taken up preliminary. As I indicated, I'm not sure of
10 all your procedures. But one thing that I would
11 recommend and request the Board to do is take a visit
12 to the site.

13 This is a piece of property that has unique
14 characteristics, which I believe cannot be adequately
15 appreciated without being seen. We'll do our best,
16 obviously, today to tell you what's there. Thank you.

17 CHAIRPERSON HALE: Ms. Baer?

18 MS. BAER: Madam Chairman, members of the
19 Board. For the record, my name is Jamie Baer and I
20 represent Anne Arundel County, its various departments
21 and offices.

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1 I believe that the evidence will show, at
2 least commencing today, that what we have here is a
3 subdivision where the plat was submitted quite sometime
4 ago, and the only thing that was between it and the
5 recording of it at the courthouse was an inadequate
6 facility that was solely within the county's realm to
7 correct.

8 It's a problem that this Board is familiar
9 with for the Broadneck Peninsula. The Board has heard
10 many a case regarding the Broadneck Peninsula and knows
11 that there was a lack of certain facilities on the
12 Broadneck Peninsula for a period of time, which halted
13 development, essentially, in that area.

14 However, when development became available
15 and this particular plat was submitted for final
16 approval, it was reviewed by all of the pertinent
17 offices. It was given all the appropriate reviews,
18 given all the appropriate approvals. And having
19 meandered its way through the -- that morass of
20 subdivision process, was finally approved and we
21 believe the county approved it correctly. And we

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1 believe that the Board will agree with that once the
2 evidence is heard. Thank you.

3 CHAIRPERSON HALE: Mr. Blumenthal, will you
4 call your first witness?

5 MR. BLUMENTHAL: Thank you. We call Mr.
6 Werner.

7 Whereupon,

8 DANIEL J. WERNER,
9 a witness, called for examination by counsel for the
10 Applicant, was duly sworn, and was examined and
11 testified as follows:

12 CHAIRPERSON HALE: Can we have your name and
13 address for the record, please?

14 THE WITNESS: My name is Daniel J. Werner.
15 My address, business address, is 303 LeJolles Road,
16 Millersville, Maryland.

17 DIRECT EXAMINATION

18 BY MR. BLUMENTHAL:

19 Q Mr. Werner, what is your professional
20 occupation?

21 A I'm a registered professional engineer,

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1 engaged in the practice of consulting engineering,
2 mostly for development work.

3 Q And by whom are you employed at the present
4 time?

5 A Anarex, Incorporated.

6 Q And how long have you been so employed?

7 A Nineteen years.

8 Q And prior to that, what was your employment?

9 A I was employed by Anne Arundel County for ten
10 years.

11 Q And in what capacity?

12 A I was an engineer. I was Chief of the
13 Construction and Inspection Division, and I worked as
14 an engineer in the Utilities Division for five years.

15 Q Mr. Werner, have you been accepted before
16 this Board of Appeals and similar tribunals on prior
17 occasions as an expert in civil engineering?

18 A Many times.

19 MR. BLUMENTHAL: Madam Chairman, members of
20 the Board, may we proceed upon the assumption that Mr.
21 Werner is qualified as a civil engineer?

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1 CHAIRPERSON HALE: We have received him
2 before as an expert.

3 BY MR. BLUMENTHAL:

4 Q Mr. Werner, are you familiar with the
5 subdivision, which is the subject of this appeal, known
6 as Woods Landing, Section 2?

7 A Yes, I am.

8 Q And at what time, approximately what year,
9 did you become familiar with this particular
10 subdivision?

11 A I would say around 1989. I was familiar with
12 it before that, but I began working on it about that
13 time.

14 Q Did you prepare, or have prepared under your
15 direct supervision, the subdivision plat or plats that
16 were recorded and from which this appeal has been
17 taken?

18 A Yes, we did.

19 Q As a result of your familiarity with this
20 subject, have you become familiar with the documents
21 that were submitted from the inception of this

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1 subdivision, starting in 1983, and the documents which
2 are contained within the county's official files?

3 A Yes, I am.

4 Q Do you have with you a series of those
5 documents which you have obtained in the ordinary
6 course of your professional employment, and which you
7 have obtained either from the county files, or which
8 were mailed by the county to you?

9 A Yes, I have.

10 Q Directing your attention to the first of
11 those documents, would you please indicate, just in
12 summary form, the title and nature of the first
13 document you have?

14 A This is an engineer's transmittal letter,
15 made by the original engineer, who filed the sketch
16 plan for this subdivision on October 26th, 1983.

17 Q And is that date set forth on that
18 transmittal certificate?

19 A Yes, it is.

20 Q Would you please show it to -- show all these
21 documents to Mr. Murray first, and then I would ask

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1 that these be numbered sequentially and that that be
2 accepted as the petitioner's first exhibit.

3 A Yes.

4 MS. BAER: The county has no objection.

5 CHAIRPERSON HALE: Mr. Murray?

6 MR. MURRAY: No objection.

7 CHAIRPERSON HALE: Applicant's Exhibit Number
8 1 will be the engineer's transmittal letter of October
9 26th, 1983.

10 (Whereupon, the document was marked for
11 identification Applicant's Exhibit No. 1 and received
12 in evidence.)

13 BY MR. BLUMENTHAL:

14 Q Mr. Werner, do you have in your possession an
15 approval letter, dated August 6th, 1984, from Anne
16 Arundel County?

17 A Yes, I do. And it's an approval letter.
18 It's granting preliminary approval. Back when this
19 subdivision was processed, there was a three step
20 process; the sketch plan process, a preliminary
21 approval process, and a final plan process. And this

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1 is the preliminary approval process.

2 Q Would that then mean that sketch plan had
3 been reviewed and approved, prior to this preliminary
4 plan?

5 A That's correct. The -- this plan would not
6 have been able to have been submitted and approved
7 without the sketch plan approval.

8 Q And from whom is that correspondence?

9 A From Dwight E. Flowers, from Anne Arundel
10 County, Design and Development Section.

11 Q Of what office?

12 A Office of Planning and Zoning.

13 Q And it is dated what date?

14 A August 6th, 1984.

15 MR. BLUMENTHAL: I would ask that that letter
16 -- that memorandum be accepted as the petitioner's
17 second exhibit.

18 MS. BAER: The county has no objection.

19 CHAIRPERSON HALE: Mr. Murray?

20 MR. MURRAY: No objection.

21 CHAIRPERSON HALE: Exhibit Number 2 will be

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1 the approval memo of August 6th, 1984.

2 (Whereupon, the document was marked for
3 identification Applicant's Exhibit No. 2 and received
4 in evidence.)

5 BY MR. BLUMENTHAL:

6 Q Do you have with you a letter dated December
7 15, 1989, addressed to Woods Landing Joint Venture from
8 Mr. Frank Ward of the Office of Planning and Zoning of
9 Anne Arundel County?

10 A Yes, I do.

11 Q Would you please indicate to the Board
12 members, in summary form, the content of that letter?

13 A The content of that letter is that the
14 Broadneck sewer was released for service and that the
15 subdivisions that were on the waiting list could now be
16 processed, and set forth certain steps to follow to get
17 their final plat approval.

18 Q Attached to that letter -- or perhaps not
19 attached with it now -- were there two other papers, or
20 groups of papers, dealing with procedures and the
21 waiting list for Broadneck sewer area?

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1 A Yes. And the first one I'll come to is the
2 Broadneck waiting list, which outlined the subdivisions
3 that were on that waiting list, and there was some, I
4 think, 51 on there. And Woods Landing was number 43.
5 And I'm just going to note that there was a final plan
6 approval granted on 4/19/85. That doesn't mean final
7 plat approval, but the plans were reviewed and
8 processed and approved April 19th, 1985. And then the
9 subdivision was placed on the waiting list, so that's
10 how --

11 Q And was there any other documents with that
12 letter?

13 A There was a document for -- Broadneck
14 subdivisions, which outlined the procedure to comply
15 with the critical areas criteria, insofar as possible.
16 And how to submit the following information, number of
17 plats, and et cetera. Just procedures.

18 MR. BLUMENTHAL: Madam Chairman, I would ask
19 that those three exhibits, in the order to which Mr.
20 Werner has testified, be accepted as Petitioner's
21 Exhibits 3A, 3B, and 3C, the first being the letter

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1 dated December 15, 1989; the second being the waiting
2 list of Broadneck sewer area; and the third being an
3 informational sheet from the Office of Planning and
4 Zoning, dealing with Broadneck subdivisions.

5 CHAIRPERSON HALE: Is there any objection to
6 those exhibits?

7 MS. BAER: The county has no objection.

8 MR. MURRAY: No objection.

9 CHAIRPERSON HALE: Exhibit Number 3 "A," "B,"
10 and "C" will -- are those identified by Mr. Blumenthal.

11 (Whereupon, the documents were marked
12 for identification Applicant's Exhibit Nos. 3A, 3B, and
13 3C, and received in evidence.)

14 BY MR. BLUMENTHAL:

15 Q Do you have a letter, dated March 15, 1991,
16 addressed to Frank Ward from your office, pertaining to
17 traffic impact studies for this subdivision?

18 A Yes, I do.

19 Q And generally, what is the content of that
20 letter?

21 A The content of that letter was in the update

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1 to our traffic impact study, we observed that there was
2 already two traffic impact studies prepared for that
3 area, one Beacon -- and one to Pettebone.

4 Both of these studies included the
5 subdivision that we were designing in their analysis,
6 and we asked that they accept their studies as our
7 study, which they did.

8 MR. BLUMENTHAL: I'd ask that that letter be
9 accepted as the petitioner's fourth exhibit. That is a
10 letter having to do with traffic, and it is dated March
11 15, 1991, addressed to Mr. Frank Ward.

12 MR. MURRAY: No objection.

13 MS. BAER: No objection.

14 CHAIRPERSON HALE: Exhibit Number 4, the
15 March 15th, 1991 letter from Frank Ward, "Re: Traffic
16 impact study."

17 (Whereupon, the document was marked for
18 identification Applicant's Exhibit No. 4 and received
19 in evidence.)

20 BY MR. BLUMENTHAL:

21 Q Do you have with you a copy of the form which

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1 was used for the final subdivision process in the
2 application form?

3 A Yes, I do.

4 Q And is it for the subject subdivision, Woods
5 Landing, Section 2?

6 A It is.

7 Q And when is it -- what is its date?

8 A It was filed on March the 28th, 1991.

9 Q And for what purpose is this form filed with
10 the county?

11 A This was for the final subdivision process
12 review form, to have the county set up the necessary
13 reviews of the final plans, and set meeting dates.

14 MR. BLUMENTHAL: We'd ask that this final
15 subdivision process application form be accepted as the
16 petitioner's fifth exhibit.

17 MS. BAER: No objection.

18 MR. MURRAY: No objection.

19 CHAIRPERSON HALE: Exhibit Number 5.

20 (Whereupon, the document was marked for
21 identification Applicant's Exhibit No. 5 and received

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1 in evidence.)

2 BY MR. BLUMENTHAL:

3 Q Did there come a time when you received a
4 copy of the letter, dated May 24, 1991, addressed to
5 the Woods Landing Joint Venture, from Mr. Frank Ward,
6 dealing with the Planning and Zoning's perspective as
7 of that date of the final plan approval status?

8 A Yes. This letter is generated by the final
9 review meeting, which was held on May the 9th, 1991.
10 It's a summation of the comments.

11 Q And does that letter contain areas of concern
12 from various operating agencies, which need to be
13 addressed before final approval?

14 A Yes, it does.

15 MR. BLUMENTHAL: We would ask that that
16 letter of May 24, 1991, over the signature of Frank
17 Ward, addressed to Woods Landing Joint Venture, be
18 accepted as the petitioner's sixth exhibit.

19 MS. BAER: The county has no objection.

20 MR. MURRAY: No objection.

21 CHAIRPERSON HALE: Exhibit Number 6.

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1 (Whereupon, the document was marked for
2 identification Applicant's Exhibit No. 6 and received
3 in evidence.)

4 BY MR. BLUMENTHAL:

5 Q During the subdivision process, were
6 communications made available to you from the Anne
7 Arundel County Public School System?

8 A Yes, they were.

9 Q And do you have a copy of a letter of
10 November 27, 1989, and an evaluation sheet from the
11 Anne Arundel County Public School System?

12 A Yes, I do.

13 Q Would you indicate, again in summary fashion,
14 the content of those two documents?

15 A The content of these two documents -- in the
16 first document, November 27, 1989, just outlined the
17 various pupils that would be generated by the
18 subdivisions in the Broadneck area, and they are
19 assigned to certain schools. Woods Landing was --
20 elementary school was Windsor Farms Elementary.

21 Q As of that day, did the -- did that

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1 communication indicate that the schools analyzed there
2 were adequate?

3 A Yes, it does.

4 Q They are adequate?

5 A Yes.

6 Following that is the evaluation sheet from
7 -- attached is an evaluation sheet from the Board of
8 Education, which shows that the facilities are
9 adequate; Windsor Farms Elementary School, Magothy-
10 Severn River Elementary School -- I mean, Middle School
11 -- and the Broadneck Junior School were adequate.

12 Q And what is the date of that evaluation
13 sheet?

14 A That was dated 5/9/91.

15 MR. BLUMENTHAL: I would ask that the letter
16 from Anne Arundel County Public Schools to Mr. Frank
17 Ward, dated November 27, 1989, be accepted as the
18 petitioner's seventh exhibit.

19 And that the evaluation sheet from the Anne
20 Arundel County Public Schools, again to Mr. Frank Ward,
21 dated May 9, 1991, be accepted as the petitioner's

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1 eighth exhibit.

2 MR. MURRAY: No objection.

3 MS. BAER: No objection.

4 CHAIRPERSON HALE: Exhibits 7 and 8.

5 (Whereupon, the documents were marked
6 for identification Applicant's Exhibit Nos. 7 and 8 and
7 received in evidence.)

8 BY MR. BLUMENTHAL:

9 Q Mr. Werner, do you have with you an
10 engineer's certificate of transmittal regarding the
11 final subdivision plan submittal?

12 A Yes, I do.

13 Q And on what date was it signed?

14 A April the 18th, 1991.

15 Q And what is the purpose of this certificate
16 of transmittal?

17 A This is -- there is a final plan that is
18 generated also that shows all of the layouts of the
19 buildings, the clearing limits, and roads, and storm
20 drains, and it's an overall plan of the subdivision,
21 called a final plan. This transmitted that plan with

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1 the necessary documents.

2 MR. BLUMENTHAL: I would ask that the
3 engineer's certificate of transmittal, dated April 18,
4 1991 be accepted as the petitioner's ninth exhibit.

5 MR. MURRAY: No objection.

6 MS. BAER: No objection.

7 CHAIRPERSON HALE: Exhibit Number 9.

8 (Whereupon, the document was marked for
9 identification Applicant's Exhibit No. 9 and received
10 in evidence.)

11 BY MR. BLUMENTHAL:

12 Q Do you have with you an interoffice
13 correspondence, dated May 8, 1991, from the Community
14 Relations Bureau, Crime Prevention Section, from the
15 Police Department to Anne Arundel County?

16 A Yes, I do.

17 Q And what is the content of that
18 correspondence?

19 A It's from Officer Tom Wagner and it says, "We
20 have no objection to this project approval at the
21 time."

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1 In other words, the police facilities were
2 adequate.

3 MR. BLUMENTHAL: I ask that that interoffice
4 correspondence from the Police Department to the Office
5 of Planning and Zoning, dated May 8, 1991, be accepted
6 as the applicant's tenth exhibit.

7 MR. MURRAY: No objection.

8 MS. BAER: No objection.

9 CHAIRPERSON HALE: Exhibit Number 10.

10 (Whereupon, the document was marked for
11 identification Applicant's Exhibit No. 10 and received
12 in evidence.)

13 BY MR. BLUMENTHAL:

14 Q Do you have an interoffice correspondence,
15 dated July 25, 1991, from Johnny Thomas, in Recreation
16 and Parks Department, to Christopher Suldano, Planning
17 and Zoning Office?

18 A Yes, I do.

19 Q And what does that interoffice correspondence
20 recommend?

21 A It recommends approval of our recreation

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1 area.

2 MR. BLUMENTHAL: I would ask that that
3 interoffice correspondence from the Department of
4 Recreation and Parks to Planning and Zoning, dated July
5 25, 1991, be accepted as the petitioner's 11th exhibit.

6 MR. MURRAY: No objection.

7 MS. BAER: No objection.

8 CHAIRPERSON HALE: Exhibit Number 11.

9 (Whereupon, the document was marked for
10 identification Applicant's Exhibit No. 11 and received
11 in evidence.)

12 BY MR. BLUMENTHAL:

13 Q Do you have an interoffice correspondence,
14 dated November 6th, 1991, from Andrew Watcher, Traffic
15 Engineer, to Chris Suldano, Office of Planning and
16 Zoning?

17 A Yes, I do.

18 Q And what is the content of that interoffice
19 correspondence?

20 A It's a change of a cul-de-sac design for a
21 road called Pindell Court to a T-turnaround, which the

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1 county looked at it to see if it was adequate for
2 traffic and they agreed with us. It provided for less
3 impervious area by putting this T-turnaround in.

4 MR. BLUMENTHAL: I would ask that that
5 interoffice correspondence, dated November 6th, 1991,
6 from Mr. Watcher to Mr. Suldano, be accepted as
7 petitioner's 12th exhibit.

8 MR. MURRAY: No objection.

9 MS. BAER: No objection.

10 CHAIRPERSON HALE: Exhibit Number 12.

11 (Whereupon, the document was marked for
12 identification Applicant's Exhibit No. 12 and received
13 in evidence.)

14 BY MR. BLUMENTHAL:

15 Q Do you have an interoffice correspondence,
16 dated April 8, 1991, from the Health Department to the
17 Planning and Zoning Office of Anne Arundel County?

18 A Yes, I do.

19 Q And what is the content of that
20 correspondence?

21 A It's from Tom Gruber and it recommends

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1 approval of the project, based on availability of
2 public water and sewer.

3 MR. BLUMENTHAL: I would ask that that
4 interoffice correspondence, dated April 8, 1991, from
5 the Health Department to Planning and Zoning be
6 accepted as the petitioner's 13th exhibit.

7 MS. BAER: No objection.

8 MR. MURRAY: No objection.

9 CHAIRPERSON HALE: Exhibit 13.

10 (Whereupon, the document was marked for
11 identification Applicant's Exhibit No. 13 and received
12 in evidence.)

13 BY MR. BLUMENTHAL:

14 Q Do you have with you a letter -- copy of a
15 letter -- from the Anne Arundel County Soil
16 Conservation District to the Office of Planning and
17 Zoning, dated July 22, 1991?

18 A Yes, I do.

19 Q What is the content of that letter?

20 A It recommends final approval of our plans.

21 MR. BLUMENTHAL: I ask that that be accepted

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1 as the petitioner's 14th exhibit, a letter dated July
2 22, 1991 from the Anne Arundel Soil Conservation
3 District to the Office of Planning and Zoning.

4 MR. MURRAY: No objection.

5 MS. BAER: No objection.

6 CHAIRPERSON HALE: Exhibit 14.

7 (Whereupon, the document was marked for
8 identification Applicant's Exhibit No. 14 and received
9 in evidence.)

10 BY MR. BLUMENTHAL:

11 Q Do you have an interoffice correspondence
12 dated August 7, 1991 from Penny Chalkley to Frank Ward?

13 A Yes, I do.

14 Q From your experience, do you know in what
15 department Ms. Chalkley is employed by Anne Arundel
16 County?

17 A She's in the Office of Planning and Zoning,
18 Environmental Section.

19 Q And what is the content of that
20 correspondence?

21 A There is general comments about what we have

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1 done through the plan, and the bottom line was, they
2 have addressed all comments made and a recommendation
3 for approval.

4 MR. BLUMENTHAL: I would ask that that
5 interoffice correspondence, dated August 7, 1991, from
6 Ms. Chalkley to Mr. Ward be accepted as the
7 petitioner's 15th exhibit.

8 MS. BAER: No objection.

9 MR. MURRAY: No objection.

10 CHAIRPERSON HALE: Exhibit 15.

11 (Whereupon, the document was marked for
12 identification Applicant's Exhibit No. 15 and received
13 in evidence.)

14 BY MR. BLUMENTHAL:

15 Q I direct your attention to interoffice
16 correspondence dated October 10, 1991, from the Anne
17 Arundel County Development Services Division to the
18 Office of Planning and Zoning. Do you have a copy of
19 that, and if so, what is its content?

20 A Yes, I do. It's signed by George Everly and
21 the content is, "Recommend final approval for the

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1 subdivision."

2 MR. BLUMENTHAL: I ask that that interoffice
3 correspondence, dated October 10, 1991, be accepted as
4 the petitioner's 16th exhibit.

5 MR. MURRAY: No objection.

6 MS. BAER: No objection.

7 CHAIRPERSON HALE: Exhibit 16.

8 (Whereupon, the document was marked for
9 identification Applicant's Exhibit No. 16 and received
10 in evidence.)

11 BY MR. BLUMENTHAL:

12 Q Do you have a letter from the Anne Arundel
13 County Public Schools to the Office of Planning and
14 Zoning, over the signature of Mr. Ripley, Supervisor,
15 dated November 27, 1991?

16 A Yes, I do.

17 Q And what does that letter indicate?

18 A This letter was in response to our concern
19 about the school and it becoming inadequate, and it
20 more or less re-emphasized that the schools are
21 adequate at this time.

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1 MR. BLUMENTHAL: I would ask that that
2 letter, dated November 27, 1991, be accepted as the
3 petitioner's 17th exhibit.

4 MR. MURRAY: No objection.

5 MS. BAER: No objection.

6 CHAIRPERSON HALE: Exhibit 17.

7 (Whereupon, the document was marked for
8 identification Applicant's Exhibit No. 17 and received
9 in evidence.)

10 BY MR. BLUMENTHAL:

11 Q Do you have a handwritten memorandum, dated
12 November 21, 1991, from the State Highway
13 Administration to the Office of Planning and Zoning,
14 and if so, what does it indicate?

15 A It's from -- indicates final plat approval.

16 MR. BLUMENTHAL: I ask that that be accepted
17 as the petitioner's 18th exhibit.

18 MR. MURRAY: No objection.

19 MS. BAER: No objection.

20 CHAIRPERSON HALE: Exhibit 18.

21 .

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1 (Whereupon, the document was marked for
2 identification Applicant's Exhibit No. 18 and received
3 in evidence.)

4 BY MR. BLUMENTHAL:

5 Q I direct your attention to a letter dated
6 November 15, 1991, from yourself to Mr. John
7 Scarborough, the Anne Arundel County Department of
8 Utilities. What does the content of that letter
9 indicate?

10 A This is for a water study that was requested
11 by the Department of Utilities -- water analysis --
12 coming from existing waters in Cape St. Claire Road,
13 and they were concerned about whether the water
14 pressure would be adequate.

15 I did the water study and showed that it was
16 adequate, and adequate fire protection, and adequate
17 domestic water use.

18 MR. BLUMENTHAL: I would ask that that
19 letter, dated November 15, 1991, be accepted as the
20 petitioner's 19th exhibit.

21 MS. BAER: No objection.

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1 MR. MURRAY: No objection.

2 CHAIRPERSON HALE: Exhibit 19.

3 (Whereupon, the document was marked for
4 identification Applicant's Exhibit No. 19 and received
5 in evidence.)

6 BY MR. BLUMENTHAL:

7 Q Do you have a copy of the interoffice
8 correspondence from the Department of Utilities to the
9 Office of Planning and Zoning, dated November 22, 1991?

10 A Yes, I do.

11 Q And what is its content?

12 A It just recommends that -- approval of the
13 subdivision, and we have a note on the plat that they
14 recommend approval.

15 MR. BLUMENTHAL: I request that that
16 correspondence be accepted as the petitioner's 20th
17 exhibit.

18 MR. MURRAY: No objection.

19 MS. BAER: No objection.

20 CHAIRPERSON HALE: Exhibit 20.

21 .

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1 (Whereupon, the document was marked for
2 identification Applicant's Exhibit No. 20 and received
3 in evidence.)

4 BY MR. BLUMENTHAL:

5 Q I direct your attention to interoffice
6 correspondence, dated November 25, 1991, from the
7 Office of Fire Marshal to the Office of Planning and
8 Zoning. Do you have a copy of that, and if so, what is
9 its content?

10 A I have a copy of it. It's from Chief Homberg
11 and it's based on our discussions about the adequacy of
12 fire flow, and because we are sprinkling all the
13 systems, the fire flow was adequate, and he recommended
14 approval.

15 MR. BLUMENTHAL: I would ask that that
16 interoffice correspondence be accepted as the
17 petitioner's 21st exhibit.

18 MR. MURRAY: No objection.

19 MS. BAER: No objection.

20 CHAIRPERSON HALE: Exhibit 21.
21 .

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1 (Whereupon, the document was marked for
2 identification Applicant's Exhibit No. 21 and received
3 in evidence.)

4 BY MR. BLUMENTHAL:

5 Q I direct your attention to interoffice
6 correspondence, dated December -- it's either 8th or
7 18th -- 1991, from the Office of Law to Chris Suldano,
8 Office of Planning and Zoning. Do you have a copy of
9 that and, if so, what is it's content?

10 A It's from the Office of Law and it's their
11 review of our homeowner's documents.

12 Q And were they approved?

13 A They were approved as to form and legal
14 sufficiency, yes.

15 MR. BLUMENTHAL: I would ask that that be
16 accepted as the petitioner's 22nd exhibit.

17 MR. MURRAY: No objection.

18 MS. BAER: No objection.

19 CHAIRPERSON HALE: Exhibit 22.

20 (Whereupon, the document was marked for
21 identification Applicant's Exhibit No. 22 and received

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1 in evidence.)

2 BY MR. BLUMENTHAL:

3 Q Do you have a copy of the sewer allocation,
4 water -- public water and sewer allocation letter from
5 Anne Arundel County, addressed to the subdivider, with
6 regard to this particular subdivision, Woods Landing
7 Section 2?

8 A Yes, I do. It's dated January 2nd, 1992.

9 Q And were adequate water and sewer capacities
10 allocated at that time to this subdivision?

11 A This says that as a result of the end of the
12 process, where we had all the final -- all plan
13 approvals, and we were allocated the sewer, yes.

14 MR. BLUMENTHAL: I would ask that this letter
15 of January 2, 1992 be accepted as the petitioner's 23rd
16 exhibit.

17 MR. MURRAY: No objection.

18 MS. BAER: No objection.

19 CHAIRPERSON HALE: Exhibit 23.

20 (Whereupon, the document was marked for
21 identification Applicant's Exhibit No. 23 and received

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1 in evidence.)

2 BY MR. BLUMENTHAL:

3 Q Did you obtain from the county's files the
4 critical area report, which was filed as part of the
5 subdivision process for Woods Landing, Section 2, which
6 is the subdivision which is the subject of this
7 hearing?

8 A Yes, I have, and there was actually two
9 parts. One is the critical area report, and the other
10 was an amendment to it, which is the -- for the
11 nontidal wetlands.

12 Q What is the date of the critical area report?

13 A November 1991.

14 Q And what is the date of the supplemental
15 amendment?

16 A I can't tell you because I don't know it.
17 They don't have a date on there.

18 MR. BLUMENTHAL: All right. We would ask
19 that the critical area report be accepted as
20 Petitioner's 24, and the supplement be accepted as
21 Petitioner's 25.

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1 MR. MURRAY: No objection.

2 MS. BAER: No objection.

3 CHAIRPERSON HALE: Exhibits 24 and 25.

4 (Whereupon, the documents were marked
5 for identification Applicant's Exhibit Nos. 24 and 25
6 and received in evidence.)

7 BY MR. BLUMENTHAL:

8 Q And lastly, do you have with you a copy of
9 the three plats which constitute the subdivision plats
10 approved by Anne Arundel County of Woods Landing,
11 Section 2, entitled "Section 2, Plat 1, Plat 2, and
12 Plat 3"?

13 A Yes, I do.

14 Q And are these the subdivision plats that were
15 approved and have the appropriate signatures on them,
16 and which have been recorded?

17 A Yes, they are.

18 MR. BLUMENTHAL: I would ask that these three
19 plats, in the aggregate, be accepted as the
20 petitioner's 26th exhibit.

21 MR. MURRAY: No objection.

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1 MS. BAER: No objection.

2 CHAIRPERSON HALE: Exhibit 26.

3 (Whereupon, the documents were marked
4 for identification Applicant's Exhibit No. 26 and
5 received in evidence.)

6 MR. BLUMENTHAL: I have no further questions
7 of the witness at this time.

8 CHAIRPERSON HALE: Mr. Murray?

9 MR. MURRAY: Thank you.

10 CROSS-EXAMINATION

11 BY MR. MURRAY:

12 Q Mr. Werner? Is that right?

13 A That's correct.

14 Q Mr. Werner, who was the engineer for this
15 project in 1983?

16 A J. R. McCrone.

17 Q And what was the date of final approval for
18 this project?

19 A The final plan approval was shown on that
20 allocation waiting list -- I don't remember, but I
21 could look it up for you. 4/19/85.

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1 Q What does final plan approval mean? How is
2 that distinguished from any other kind of final
3 approval?

4 A The plans were reviewed by the various
5 agencies in the county and the -- approval, but they
6 couldn't give us a record plat because of the sewer
7 allocation.

8 Q So it wasn't final in the same sense that
9 it's final now?

10 A It wasn't final in the same sense because we
11 couldn't get a record plat. We have a record plat now,
12 yes.

13 Q What exactly, if you will -- strike that.

14 Have you personally been involved in the
15 development of the plans for this project?

16 A The -- since it has come to our firm, yes, I
17 have.

18 Q And that is when?

19 A I'm just guessing because we have a long, you
20 know, time of working on it before we started doing
21 anything, but I think it was in '89.

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1 Q Did you personally have anything to do with
2 issues such as the location of houses, and lots, the
3 layout?

4 A Personally, I was involved in knowing where
5 the houses and -- are located on the property, through
6 the -- my designer, who works for me, through contacts
7 with the client, and trying to position them to provide
8 for the best grading and service of sewer and water.
9 To some extent, yes.

10 Q Is the plan that is approved, and which is
11 the subject of this proceeding, essentially the plan
12 that you inherited?

13 A No. It's much better.

14 Q And what are the differences?

15 A The biggest difference is that the plan we
16 inherited had little or no setback from the waterfront.
17 We have at least 50 feet.

18 Q Is the plan that is approved, and is the
19 subject of this proceeding, one that you developed
20 initially? That is, as you dated it in 1989?

21 A It's a plan that's final approval has evolved

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1 over our initial submittal to the county, and
2 negotiations with the county, through our firm and the
3 county, and it has evolved. I would say it's not
4 exactly the same plan that we initially submitted, no.

5 Q What was the setback provided in the first
6 plan that you submitted to the county?

7 A I don't really recall.

8 Q Did you submit a plan to the county in the
9 first instance, or did you ask the county for guidance
10 as to what you should do with respect to picking up the
11 earlier plan?

12 A We -- our firm -- and we have several people
13 in our firm who worked on this project -- are involved
14 with the county prior to submitting any kind of plans
15 to them. We ask for their opinions on it, and we work
16 -- we always work very closely with the county
17 agencies.

18 Q Do you have a copy of your plan layout that
19 we can put up on the board and ask you to speak about?
20 I thought I saw one up there a few minutes ago.

21 A We do, yes.

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1 We also have a copy of the plan that was
2 originally prepared by J. R. McCrone.

3 Q Mr. Werner, would you briefly describe for
4 the Board this layout and what its principal features
5 are in connection with the surrounding area?

6 A The layout is a townhouse subdivision. I
7 think it's 153 total lots. The townhouses are large.
8 The entrance to the subdivision is off of Bayhead Road,
9 through the existing Woods Landing subdivision. It
10 terminates in a cul-de-sac, and off that cul-de-sac are
11 numerous courts that are open section courts, minimum
12 paving, to service the individual townhouses.

13 There are public water and sewer available.
14 There is designed storm water -- water quality devices.

15 The green area is the trees that are being
16 retained.

17 And I guess that's -- I don't know how much
18 you want to talk about it.

19 Q Let me ask you some specifics. Is the parcel
20 today completely wooded?

21 A Yes.

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1 Q Is the area highlighted in yellow the
2 townhomes themselves?

3 A That is correct.

4 Q The area in white or pale blue would be the
5 driveways?

6 A The area -- no. The area in white would be
7 the lawn areas, the area behind the houses that would
8 be within the limits of the disturbance.

9 The area in the dark green would be the area
10 that's not going to be disturbed.

11 Q How about the blue on the left and lower
12 portion?

13 A The blue is just to show the waterfront.

14 Q That body of water is what?

15 A It's the Little Magothy River.

16 Q What are those two little pieces off to your
17 left -- what is the difference?

18 A That is -- well, the one is the -- this one
19 here, on my right, is our proposal for the little
20 parcel that's across from the existing homes in Woods
21 Landing. And the other one is the original J. R.

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1 McCrone plan.

2 Q And what you have drawn up there constitutes
3 the entire acreage of this project?

4 A Yes.

5 Q And how much acreage is that?

6 A I'd have to look at it. I can't remember
7 exactly. I think it's like 60 -- 60 acres, I think,
8 plus or minus.

9 Q Could you be off?

10 A I could. The plat is right there. I could
11 look at it.

12 Q The 26th exhibit.

13 A Yes. I could be way off. Thirty-one.
14 Thirty-one acres. I remember it was 60 -- 31 acres.
15 Yes.

16 Q And you have 153 lots?

17 A 153 lots, yes.

18 Q I call your attention to the exhibit you've
19 just been presented.

20 A Yes.

21 Q Where on the board is the area designated

1 recreation area shown?

2 A Out here, on the corner of Bay Head Road and
3 Woods Landing Road.

4 There's also Woods Landing, Section 1
5 recreation area right here, but that's part of Section
6 1.

7 Q That recreation area up at the corner of
8 Woods Landing Road and Bay Head Road is part of Section
9 2, is it not?

10 A Yes.

11 Q Is it shown up here on the board at all?

12 A No.

13 Q So to correct what you said earlier, all of
14 the project is not shown up here on the board?

15 A All of the project which the townhouses are
16 going to be in is shown on the board, yes.

17 Q You don't plan to put any townhouses in this
18 section out by the corner?

19 A No.

20 Q Approximately how many different concept
21 plans did you submit to the county in connection with

1 your work on this project?

2 A I really don't know. We have a continuous
3 process of going back and forth with the different
4 areas of setback from the water, layout of the roads,
5 cul-de-sacs, et cetera. I have no idea how many, but
6 it was a continuous process.

7 Q At any time did you contemplate a buffer of
8 100 feet or more?

9 A No. I don't think we -- we might have
10 contemplated it, but we didn't do a whole lot of work
11 on it, no.

12 Q At any time did you contemplate a density of
13 less than 153 units?

14 A No, we did not.

15 Q Did you ever design a plan which had a
16 smaller amount of impervious surface on it than the one
17 shown?

18 A No. I'd say this was probably the -- the
19 ultimate plan was probably the least impervious surface
20 that we had shown on any of the plans.

21 Q What is the percentage of impervious surface?

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1 A The amount of the impervious surface now is
2 8.6 acres, so that's in the neighborhood of 25 percent.
3 It's also two acres less than what the J. R. McCrone
4 plan was, the original plan.

5 Q That preceded critical areas?

6 A That preceded critical areas, yes.

7 Q And how much of the area is presently
8 forested?

9 A Basically, all of it.

10 Q How much of that will be removed?

11 A How much will be removed? Well, I -- we're
12 saving 10.6 acres. 10.6 acres, which is about -- we're
13 removing 30 acres there -- I mean 20 acres.

14 Q Basically two-thirds will be removed?

15 A Correct.

16 Q Have you ever personally inspected this site?

17 A I've been on this site I want to say twice,
18 but only once did I go back on the back part of the
19 site. The other time I was out looking at the storm
20 drain outfalls and the recreation area.

21 Q Are you personally involved as part of this

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1 project in looking at the environmental issues?

2 A My role in this process mostly is in the
3 technical design role, as far as engineering goes. The
4 design of storm water management facilities, and roads,
5 and storm drains, and the sewer, and the water.

6 As far as the planning aspects, another
7 person in our firm does most of that.

8 Q Do you know what kind of vegetation is on the
9 site?

10 A I'm not 100 percent familiar with all the
11 vegetation, no. I know of some, but I don't -- you
12 know, I don't know exactly what's there now.

13 Q Did you, while you were on the site, notice
14 any mountain laurel?

15 A I can't say I specifically noticed any
16 mountain laurel because I live -- my house is
17 surrounded by it. I see it all the time, so I -- I
18 wouldn't have particularly noticed it, if it was there.
19 or wasn't there.

20 Q Would you have noticed it if it was larger
21 than the state champion mountain laurel?

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1 MR. BLUMENTHAL: Objection to the second
2 question. The witness has already said he didn't
3 notice any mountain laurel.

4 THE WITNESS: I didn't take note of any of
5 it.

6 CHAIRPERSON HALE: He can answer it, if he
7 can.

8 THE WITNESS: I didn't take note of any of
9 it, to tell you the truth.

10 BY MR. MURRAY:

11 Q Did you, or did anyone in your firm, in
12 designing the layout of the project, make any special
13 effort to identify and avoid destroying particularly
14 significant trees or shrubs?

15 A Yes, we did. We located them and they are on
16 the plans, and we've tried to save as many as we could.

17 Q But you didn't do that yourself?

18 A I didn't do it myself. No. We go out with
19 the surveyors and they locate them, and then we plot
20 them on the plans, and then we try to design around
21 them.

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1 Q And is it your -- is it your testimony that
2 you have submitted today, in one of your documents, a
3 -- some kind of sketch or plan that shows where all the
4 valuable or more significant vegetation is located?

5 A I think we have. This plan here shows there
6 is no significant vegetation. There's these little
7 green spots, showing there are large trees that we try
8 to work around.

9 Q And you are saying that there are no others?

10 A I'm not saying there is no others, but I
11 think these are the best specimens that we could find.

12 Q But your testimony is, you didn't have
13 anything to do with it?

14 A That's correct. Except plot them.

15 Q Can you explain to the Board briefly the
16 topographical features of the site?

17 A Topography wise, it's a fairly flat site,
18 good topography. There are certain areas of slopes,
19 and swales, that provide for the drainage, and
20 generally drains towards the Magothy -- Little Magothy
21 -- on two sides. It's not a very unique site, as far

1 as the property goes. There's nothing unusual about
2 it.

3 Q When you say it's flat, is it as flat as the
4 floor of this room?

5 A Oh, nothing -- no. The topography is not as
6 flat as this floor of this room. It's reasonably flat.
7 There's not a lot of steep slopes on it at all.

8 Q Is it flat like it's flat on the Eastern
9 Shore?

10 A I don't think it's quite that flat, no. Some
11 areas of it might be, but it's -- you know, it's -- I
12 can't explain it, but it's certainly flatter than one
13 and two percent, and it's not real steep, you know, 15
14 to 25 percent.

15 Q The swales that you mentioned, how far back
16 from the water do those swales extend into the site
17 itself?

18 A Well, they extend back up into -- pretty much
19 to the -- some of the road areas. I guess you would
20 call them swales. There's -- that come back off the
21 water. But, you know, there are some of them that go

1 up there pretty far, that come almost up to the road.

2 Q Well beyond the 50 foot buffer provided?

3 A Some of them go well beyond the 50 foot
4 buffer provided, but not -- I don't know if you'd call
5 it "well." They are maybe another 50, 100 feet, some
6 of them are. The biggest one is left natural, though.

7 Q What kind of soils do you find on the site?

8 A We have done soil tests and they were
9 varying. I think most of them were a sandy loam type
10 soil and I won't -- I don't have the soil borings here
11 with me, but they were -- some supported what they call
12 infiltration systems, which means they were -- had
13 infiltration rates that were acceptable, and some that
14 would not. So they were more of a loamy, silty
15 material. They would create flow attenuation devices
16 there, so they vary, but they are mostly a sandy loam,
17 I would say.

18 Q Some of the soils are highly erodable?

19 A I think that the soil classification there
20 would be -- I don't think it was Monmouth in there, so
21 I don't know if it is highly erodable or not. I don't

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1 think so.

2 Q Did you observe the banks where the water
3 meets the land?

4 A I can't say I -- I really noticed a whole lot
5 of -- it didn't strike me, let's put it that way, as
6 being something that was really a serious erosion
7 problem. I don't want to say I observed them, though.

8 Q What kind of storm water management devices
9 have you provided for?

10 A We used various types of devices. They were
11 strictly for water quality. And like I said before, in
12 the areas where the soils would support infiltration,
13 we used infiltration trenches.

14 Some of the areas we used flow attenuation
15 devices, which is a device that's -- slows down the
16 water and runs it through a filter bed, a rock bed, and
17 discharges it.

18 And then there's some areas I think we used a
19 filter strips -- grass filter strips. It would just
20 flow over grass for an extended period of time.

21 We designed the subdivision in such a way as

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1 to provide as much storm water flow in open section
2 grass ditches as possible.

3 And one notable exception in this
4 subdivision, that you don't see in a lot of townhouse
5 subdivisions, is the courts that service the houses are
6 open sections.

7 Most of the time you will find these
8 subdivisions have curb and gutter. These are not. So
9 the storm water from these courts are filtered through
10 the grass as much as possible.

11 Q Now, when you talk about filtered through the
12 grass, this is the 50 foot buffer between the water and
13 the development?

14 A No. This is the section of the -- next to
15 the road and -- the side swales. The grass -- it's
16 between the front yard of the houses and the area that
17 goes between the houses is all grass, and it's a lot
18 more than 50 feet.

19 Q So in the event of a rain, the water sheet
20 flows across the surface?

21 A Not all of it, but it sheet flows along a

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1 grass swale for a long period of time before it gets
2 into a piping system, yes.

3 Q You said your piping systems are of two
4 types?

5 A No. The piping systems are just -- they are
6 pipes. But the piping systems discharge into devices
7 that provide water quality for the water that flows
8 into them, somehow or another. There's various types
9 of devices you can use.

10 Q But you're using two; is that correct?

11 A We're using infiltration and flow
12 attenuation, but there's also different types of
13 infiltration. In essence, yes, we're using two.

14 Q Let's talk about each of them briefly.

15 The flow attenuation device.

16 A Yes.

17 Q What does it do?

18 A Well, it directs the water, or not all of the
19 water, but directs the -- what we call the first flush,
20 or the first half inch of runoff into a device.

21 And this device is a block -- number two

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1 stone, for better words -- structure that the water
2 goes in on the top, filters down through the rock, gets
3 collected on the bottom, and another pipe takes it out
4 on the bottom.

5 It does a couple of things. It removes some
6 initial impurities of the water, and it also slows down
7 what we call -- concentration, which slows the water
8 down.

9 Q Where do these removed impurities go?

10 A Well, they stay mostly inside, unless they
11 get flushed out. But also a lot of them are
12 biodegradable, so they have a natural process of being
13 reduced inside the structure. Not all of them, but
14 some of it does.

15 Q When you say "biodegradable," you're talking
16 about what, nitrogen type products?

17 A Well, most of the stuff that we're worried
18 about is biodegradable. Petroleum products are
19 biodegradable.

20 Q What about heavy metals?

21 A Well, heavy metals I don't think are -- any

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1 problems in a residential subdivision.

2 Q You don't get any heavy metals from
3 automobile usage?

4 A I don't know of any. You might get some.
5 There is no lead in gasoline anymore, so I don't know
6 where it would come from.

7 Q The other type of device you indicated is
8 called what?

9 A That's an infiltration device.

10 Q And how does it work?

11 A It works by directing, again, the first
12 flush, the first -- runoff into a trench. And that
13 water sits in that trench and over a period of hours,
14 depending on how it is designed, between 24 and 72
15 hours, it's infiltrated back into the ground. Then it
16 is clear for the next storm to fill up again.

17 Q And how -- is that something that's good
18 indefinitely?

19 A Nothing is good indefinitely. There's
20 maintenance required. There are structures that don't
21 work properly and fail and over a period of time have

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1 to be replaced and fixed.

2 Q What plans has the developer of this project
3 made for future maintenance?

4 A He's required to maintain it, by law, for a
5 certain period of time. I'm not sure exactly what that
6 is. And after that, if they are private systems, which
7 I think these are, then the homeowner's association is
8 required to maintain them.

9 Q Have you had experience in whether
10 homeowner's associations maintain those types of
11 structures adequately?

12 A No, because the device is a rather -- of
13 rather recent vintage, we'll say, and the laws do
14 require them to. And if they don't, then the county
15 has the right, under their ordinances, to go in and fix
16 them for them, and charge them to maintain them.

17 Q Are there any tidal wetlands on the site?

18 A Tidal wetlands? I'm not 100 percent sure,
19 but I'm pretty sure that right along the edge there are
20 tidal wetlands, yes, but how much, I'm not sure.

21 Q What about nontidal wetlands?

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1 A There were some nontidal wetlands, too.

2 Q Can you identify their locations?

3 A They were identified in that report and I --
4 and I can't, no.

5 Q What, if anything, have you done to either
6 avoid or mitigate?

7 A We stayed away from them. That's what we've
8 done.

9 Q How far?

10 A I would have to look at the plans to find
11 out. I'm not sure. They require a 25 foot buffer, or
12 a waiver to that -- that requirement. And I don't
13 think we got it. And we have somebody here that might
14 be able to testify better to that than me.

15 Q Are there any wetlands issues, tidal or
16 nontidal, unresolved at this point?

17 A Not that I know of. No.

18 Q Would you know?

19 A No. I wouldn't know. I know of none.

20 MR. MURRAY: Thank you, Mr. Werner. That's
21 all the questions I have.

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1 CHAIRPERSON HALE: Ms. Baer?

2 CROSS-EXAMINATION

3 BY MS. BAER:

4 Q Mr. Werner, in addition to those things that
5 you have already described, did you also -- were you
6 also required to show environmental protection during
7 the construction phase, to include such things as silt
8 fences, inlet protection, and the like?

9 A That's a part of the grading permit process,
10 and also the final plan. You do show those concepts on
11 there. But they are really controlled by the grading
12 and sediment control plan which, yes, they will be
13 required.

14 Q And when you indicated you were -- the
15 devices that were used were used for water quality,
16 what does that mean?

17 A That means that we don't really control the
18 peak flows of the design storms. All we do is to
19 provide for treatment of pollutants that normally are
20 associated -- and most of the pollutants you get are
21 associated with the first portion of the runoff from a

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1 storm. The first half inch of runoff is what we used
2 to design these -- these systems.

3 Q Now, in your experience as an engineer,
4 working on development projects, can you give me an
5 idea of the percentage of improvements caused by the
6 one half inch water quality management? Can you give
7 me an idea of how that improves the water quality?

8 A It depends on the device you use and they
9 vary with -- with the type of device. But say the --
10 the infiltration devices are the best. The -- probably
11 the filter strips are the least effective. And I would
12 say they are anywhere from a range of 15 percent
13 effective for the filter strips, up to -- and I'm --
14 can't remember exactly, but I think it's like 60
15 percent for the infiltration devices.

16 Q At the time that you first became familiar
17 with this project, did you find yourself having to
18 familiarize yourself with the work of the previous
19 engineer?

20 A That was the first prerequisite, yes. We
21 reviewed their plans.

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1 Q And what, if any, difference was there
2 between the current plan and the previous plan,
3 regarding conservation strips, or open space?

4 A We have provided for more setbacks on the
5 waterfront than the old plan. We had the old plan up
6 there, I think. It's sitting right there now. As you
7 can see, there's virtually no setback -- no setback
8 from the wetlands -- I mean, from the Little Magothy
9 River on the original plan.

10 There is more woods being removed and
11 disturbed by that plan. There is more impervious area
12 being generated by that plan.

13 Q Let's do this. How much more impervious
14 surface was there on that original plan?

15 A Impervious area, there's about -- almost two
16 acres. About 1.70, or something like that.

17 Q And about how much buffer is between the
18 development and the water, according to the current
19 plan?

20 A The current plan, there's 50 foot of buffer.
21 A minimum of 50 foot. I would -- in most cases, it's

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1 more than that.

2 Q And do you consider that a vast difference
3 from the original plan?

4 A The original plan environmentally can't
5 compare with our plan. There is -- there is no storm
6 water management devices. There is no grass swales
7 along the parking courts. There is more impervious
8 area. And there is less buffer along the water. And
9 there is more trees being removed.

10 Q And why did you make those changes?

11 A I wouldn't say blackmail by the county, but
12 let --

13 Q We are not offended.

14 A We were pushed by the county, as I would say.
15 I don't think it was -- we were being -- our developer
16 was being uncooperative. He wanted to make a quality,
17 class subdivision, with units that were going to have
18 been -- for townhouse units, would have been a
19 relatively high price.

20 Q And so some of those adjustments, at least,
21 were made at the suggestion of the Office of Planning

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1 and Zoning?

2 A That's correct.

3 Q Primarily -- you've indicated there are
4 several -- two major kinds of water quality devices
5 that you're using.

6 What is the primary kind of device that's
7 being used?

8 A Basically, that -- we would try to use
9 infiltration devices as our primary type of device to
10 use. And most of these, I think, are -- I don't have
11 the exact number. I don't have the design plans here
12 with me, but most of these are infiltration devices.

13 Q And to the best of your knowledge, are those
14 devices among the various that are out there in the
15 world to use, are those the more effective kinds?

16 A For pollutant removal, yes, they are.

17 MS. BAER: I have no further questions.

18 Thank you.

19 CHAIRPERSON HALE: Members of the Board? Mr.
20 Schafer.

21 .

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EXAMINATION BY THE BOARD

BY MR. SCHAFER:

Q Mr. Werner, what is the zoning of this property?

A R-5.

Q R-5. Are townhouses allowed, by right, in an R-5 zoning?

A No, they are not. There is a special exception.

Q And when was that special exception received?

A I don't have that date with it, but it's been sometime ago.

Q Sometime ago, but you have no idea what the date is.

Okay. On Petitioner's Exhibit Number 15, the letter from Penny Chalkley, it says -- the second paragraph says, "There is no special exception pending for a community pier, so the clearing proposed is only for a fishing pier, which does not require vehicular access." Can you explain that to me?

A Well, we had proposed and looked at a couple

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1 of schemes for providing waterfront recreation
2 facilities for the community. And it varied from boat
3 ramps, to piers with boats docked at it. And the final
4 analysis, and the final thing we accepted, was we were
5 going to build this little fishing pier for the
6 community to walk out on and take fishing lines out,
7 but no boating, and no boat launching ramp.

8 That doesn't require a special exception for
9 a community -- a marine facility. That's what it
10 means.

11 Q Okay. Is that on the R-5 or the open space
12 property?

13 A It's on the R-5. The pier is shown up there
14 in the corner on the left-hand side of the plan. You
15 can see it. It wasn't colored in, but you can see
16 where the little pier is sticking out there. That's
17 what we proposed.

18 Q Okay. This is my last question. What is
19 mountain laurel?

20 A Mountain laurel. It looks like -- I guess
21 you call it an azalea, or a rhododendron, but it's a --

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1 it's a woodsy plant, big dark green leaves on it mostly
2 all year, and it's got a -- I guess like a purplish
3 color or a pink color flower on it. And they are very
4 pretty.

5 CHAIRPERSON HALE: Any other questions for
6 this witness? Mr. Johnson.

7 BY MR. JOHNSON:

8 Q Mr. Werner, I probably missed a lot of what
9 you've said because I've been sitting here reading
10 every one of these exhibits. But Mr. Schafer has the
11 Exhibit 15, and he actually addressed some of my
12 questions.

13 But on this fishing pier, what type of
14 parking facilities will there be for the people who
15 would use it?

16 A There would be no parking facility. You'd
17 have to walk to it. It's not a pier that you would --
18 you would go up and drive a car up, and you know, take
19 off a boat, or take up a whole bunch of equipment.
20 It's something for the community just to walk to, to
21 walk out on the pier, look at the water. For the kids

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1 to throw a fishing line over. I doubt -- I live on the
2 Magothy River, and I doubt if they are going to catch
3 too many fish, you know.

4 Q Well, we had a case similar to this maybe a
5 year ago and the complaint there was that the people
6 weren't going to walk that far.

7 A This is -- you're talking about --

8 Q They would drive up there.

9 A You're talking about less -- I can't foresee
10 that, that people wouldn't walk there. It's not that
11 far to walk.

12 Q All right. Now, you say the pier is on the
13 upper left-hand corner. I can't see it myself.

14 A I can show it to you.

15 Q If Mr. Blumenthal could just point to it.

16 Okay. And --

17 MR. BLUMENTHAL: I don't believe that this is
18 part of the subdivision.

19 THE WITNESS: No. We have not even applied
20 for building permits or anything else for that. That
21 might -- you know, that might never even happen. We're

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1 just --

2 BY MR. JOHNSON:

3 Q So that pier is really -- what Penny Chalkley
4 talked about, that's really not a part of this case.
5 It's just a plan for the future?

6 A That's correct. She wanted to make sure we
7 weren't planning for a community marina facility, which
8 we needed a special exception to have, and we were not.
9 We are not.

10 Q Just out of curiosity, are you reserving any
11 area for parking at all?

12 A I don't see any there. It's all green area
13 right now. I don't anticipate we would do that. It's
14 -- there is no plans, as far as I know -- I'm not the
15 developer. I'm the developer's engineer. He might not
16 tell me everything, but I think he does. There is no
17 plans to build a community marina, or any kind of
18 facility like that at all here now.

19 MR. JOHNSON: All right. Thank you.

20 CHAIRPERSON HALE: Mr. Blumenthal?

21 MR. BLUMENTHAL: In that Mr. Werner has

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1 testified to various plats, in order to protect the
2 record, may I request that we have the plat on the
3 right easel, which is the rendered current subdivision
4 plat, be accepted as the petitioner's 27th exhibit.

5 In contrast, the plat which is on the left
6 easel, which has been described as the original McCrone
7 plat, be accepted as the petitioner's 28th exhibit.

8 And there is a plat behind that, which is a
9 comparison of the McCrone original proposal and the
10 Anarex final proposal of a smaller portion of this
11 subdivision, which is not shown on the -- what's
12 identified as Exhibit 27, and the McCrone portion would
13 be on the left side of the plat, as one looks at it,
14 the Anarex final portion on the right side. We ask
15 that that be accepted and identified as the
16 petitioner's 29th exhibit.

17 CHAIRPERSON HALE: Any objection to those
18 exhibits?

19 MR. MURRAY: None.

20 MS. BAER: No objection.

21 CHAIRPERSON HALE: Those will be Exhibits 27,

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1 28, and 29.

2 (Whereupon, the documents were marked
3 for identification Applicant's Exhibit Nos. 27, 28 and
4 29, and received in evidence.)

5 MR. BLUMENTHAL: I have no further questions
6 of Mr. Werner.

7 CHAIRPERSON HALE: Seeing no further
8 questions, you may be excused as a witness.

9 (Whereupon, the witness was excused.)

10 MR. BLUMENTHAL: At this time I would ask
11 that the members of the Board take judicial notice of
12 the following legislation, both county and state.

13 Bill Number 49-88, which is the Chesapeake
14 Bay Critical Area legislation, adopted by Anne Arundel
15 County.

16 Bill Number 90-86, which pertains to interim
17 planning in the Chesapeake Bay critical area.

18 Bill Number 42-86, which was the predecessor
19 of 90-86, which likewise pertains to interim planning,
20 under the interim bill -- or planning under the interim
21 bill of the Chesapeake Bay critical areas.

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1 And particularly, the Code of Maryland
2 Regulations, known as COMAR, Title 15, I believe it is,
3 Section 14.15.09, dealing with habitat protection areas
4 in the critical area.

5 And the Natural Resources Article, dealing
6 with the critical areas program, Sections 8-18.10 and
7 8-18.09.

8 During my closing arguments, I do have copies
9 of these, and I will make them available to counsel,
10 and to the Board members.

11 That would conclude the petitioner's direct
12 presentation. Thank you.

13 CHAIRPERSON HALE: Mr. Murray?

14 MR. MURRAY: My first witness would be Mr.
15 Charles Frank.

16 Whereupon,

17 CHARLES FRANK,
18 a witness, called for examination by counsel for the
19 Woods Landing Community Association, was duly sworn,
20 and was examined and testified as follows:

21 CHAIRPERSON HALE: Can you identify yourself,

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1 please, for the record, with your name and address.

2 THE WITNESS: My name is Charles William
3 Frank, 442 Cranes Roost Court, Woods Landing,
4 Annapolis, Maryland 21401.

5 My current position is president of the Board
6 of Directors of the Woods Landing Community Services
7 Association.

8 DIRECT EXAMINATION

9 BY MR. MURRAY:

10 Q Mr. Frank, how many members does the
11 association have?

12 A Ninety-nine, which constitute the present 99
13 residences -- residences, dwellings, in Woods Landing,
14 Plat 1.

15 Q And does the community association itself own
16 any real estate near the proposed project?

17 A Yes. We own the various open space areas
18 around the homes, the tennis court area, and two
19 parcels of recreation land adjacent to Secretariat
20 Drive.

21 Q Has the community association adopted a

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1 position with respect to this project?

2 A After --

3 Q Yes or no?

4 A Yes.

5 Q How was that position developed?

6 A That position was developed as a result of
7 numerous special meetings, prior -- with the community,
8 to inform them of what was taking place in connection
9 with the development. And also meetings with the
10 county representatives.

11 And subsequently, there was some meetings
12 with the developer between two board members, in an
13 effort to resolve the differences.

14 Q Did there come a time that there was an at-
15 large community association meeting on this subject?

16 A Yes. In accordance with the by-laws of the
17 community association, a special meeting was called on
18 December 16th, 1991, for the purpose of voting on
19 whether or not to proceed with an appeal of Woods
20 Landing 2 Subdivision, when approved by Anne Arundel
21 County.

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1 Q How many of the members of the community
2 association responded to that inquiry?

3 A There were present at the meeting, either by
4 proxy, or in attendance, 69 homeowners.

5 Q And was a vote taken?

6 A A vote was taken in regards to the appeal,
7 and 70 percent, or approximately 65 people of the
8 members present at that meeting, voted to appeal the
9 subdivision.

10 I might add, this was the largest turnout
11 that we've ever had for a meeting in the seven years
12 that I've lived in Woods Landing.

13 Q Now, you indicated that 70 percent of the
14 people voted in favor. That included the proxies;
15 right?

16 A I indicated that there were 70 percent of the
17 people in attendance. That approximately 64 -- two-
18 thirds of the people present -- correction -- 64 people
19 of the people present voted to appeal the subdivision.

20 Q And has the Board of Directors, therefore,
21 adopted an opinion, or a position, with respect to the

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1 subdivision approval?

2 A The board's position is that there is too
3 much density of homes in the area, too much clearing of
4 the trees, and too much of impervious surfaces.

5 This is a natural wooded area that is
6 critical to the Little Magothy River, upper reaches.
7 There, in our opinion, are highly erodable soil banks
8 along the riverfront. Indications are that, by visual
9 inspection, that there is trees on occasion that have
10 fallen into the creek, that the water level, or the
11 depth of the water, due to surrounding subdivisions,
12 has steadily increased over the years, as a result of
13 these subdivisions and highway construction, et cetera.

14 Q You said the depth of the water has
15 increased.

16 A Decreased. Decreased. Decreased.

17 Q Do you have with you today a brochure with
18 pictures in it regarding this subdivision in which you
19 live?

20 A Yes. This was a brochure that was given to
21 the original purchasers of homes in Woods Landing, when

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1 the development was done by the former owner, Mr.
2 Steven Searight, which indicated, at that time, that
3 Woods Landing was a forerunner in environmental
4 protections by less clearing of trees, and quality of
5 homes, and quality, as far as the environment is
6 concerned.

7 They indicate on this brochure that in the
8 picture, that the property in question is in the top
9 center portion of this picture, at the time the
10 brochure was printed, which was probably in the early
11 '80s.

12 Q Just so the record will be clear, you're
13 pointing to a --

14 A Page three.

15 MR. MURRAY: Page three of the brochure. I'd
16 like to make this an exhibit. I'll show it to counsel
17 at this time.

18 MR. BLUMENTHAL: I object on the grounds of
19 relevance. I don't know what this brochure has to do
20 with whether the subdivision which has been appealed
21 meets or does not meet the criteria applicable to

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1 subdivisions of its nature.

2 This is a presentation by a former developer,
3 of a former section, and he is not here to be cross
4 examined, and it pertains -- has no bearing upon
5 whether the subject subdivision was properly approved
6 by Anne Arundel County or not. That is the only issue
7 which is before this Board.

8 MS. BAER: Madam Chairman, I would also
9 object because I have no way of knowing about the
10 authenticity of the photographs that have been brought
11 to your attention.

12 We don't know who took them. We don't know
13 when they were taken. They are very pretty pictures,
14 but they're not probative in any way. So I believe
15 that they would be inappropriate as a part of this
16 document to be entered.

17 CHAIRPERSON HALE: Mr. Murray, can you
18 explain to the Board the relevance of this sales
19 brochure to this particular appeal?

20 MR. MURRAY: Well, the principal relevance
21 was to provide the Board with this particular

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1 photograph, which Mr. Frank just identified as being a
2 photo from the water side, of the site in question.

3 It happens that it appears in this brochure,
4 which is the place where he had it. But it's the
5 photograph that we're interested in having you make
6 reference to.

7 And if anyone needs the record to be further
8 established that this -- this photograph represents, in
9 fact, the site, I can ask Mr. Frank some additional
10 questions. But I thought he adequately indicated that
11 that's what it represented.

12 CHAIRPERSON HALE: Would you do that, please?

13 MR. MURRAY: Yes.

14 MR. BLUMENTHAL: I have no objection if the
15 brochure is being submitted solely for the purpose of
16 showing a photograph of the subject site, which appears
17 to be an aerial photograph, as it existed in the early
18 1980s.

19 If that is the only purpose for which it is
20 being submitted, and the witness knows that that
21 photograph is accurate, then I have no objection to

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1 that particular submittal.

2 CHAIRPERSON HALE: Ms. Baer?

3 MS. BAER: I would agree with that. I have
4 no problem with it.

5 MR. MURRAY: And I don't either.

6 CHAIRPERSON HALE: Then we will accept
7 Protestant's Exhibit Number 1, the sales brochure of
8 early 1980s, page three photo.

9 (Whereupon, the document was marked for
10 identification Protestant's Exhibit No. 1 and received
11 in evidence.)

12 MR. MURRAY: No further questions for this
13 witness.

14 CHAIRPERSON HALE: Mr. Blumenthal.

15 CROSS-EXAMINATION

16 BY MR. BLUMENTHAL:

17 Q Mr. Frank, do you know how many acres
18 comprises Woods Landing, Section 1?

19 A I would say in the vicinity of 20 acres.

20 CHAIRPERSON HALE: Excuse me? 20 or 28?

21 THE WITNESS: 20.

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1 CHAIRPERSON HALE: 20.

2 MR. BLUMENTHAL: No further questions.

3 CHAIRPERSON HALE: Ms. Baer?

4 CROSS-EXAMINATION

5 BY MS. BAER:

6 Q Mr. Frank, when were the 99 units that you
7 have referred to constructed?

8 A They were constructed during the period of
9 1979 through -- I think the last house was constructed
10 in 1986.

11 MS. BAER: I have no other questions.

12 CHAIRPERSON HALE: Members of the Board?

13 BOARD MEMBERS: (No response.)

14 CHAIRPERSON HALE: Mr. Murray?

15 MR. MURRAY: No follow-up.

16 CHAIRPERSON HALE: Seeing no questions, you
17 may be excused as a witness.

18 (Whereupon, the witness was excused.)

19 MR. MURRAY: The next witness would be Mr.
20 Steve Treat.

21 .

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1 Whereupon,

2

STEVEN TREAT,

3

a witness, called for examination by counsel for the

4

Woods Landing Community Association, was duly sworn,

5

and was examined and testified as follows:

6

CHAIRPERSON HALE: Would you identify

7

yourself for the record, please, with your name and

8

address.

9

THE WITNESS: My name is Steven Treat. I

10

live at 424 Cranes Roost Court, Annapolis 21401.

11

DIRECT EXAMINATION

12

BY MR. MURRAY:

13

Q Mr. Treat, do you own real estate in the

14

Woods Landing 1 Subdivision?

15

A Yes, I do.

16

Q And where is it located with respect to the

17

proposed development?

18

A The property I own is adjacent to the

19

proposed development.

20

Q Are you familiar with the site of the

21

proposed development?

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1 A Yes, I am.

2 Q And how did you gain that familiarity?

3 A Well, being adjacent to the property, number
4 one, my windows look right out at it. So every day I
5 can look out and see the property.

6 In addition to that, we also venture back
7 there and walk the property because of its beauty. So
8 we go back there quite often.

9 Q Have you had occasion to engage in any
10 activity on the water side of the property?

11 A I own a little 13 foot plastic sailboat.
12 That's a little one-man sailboat that I sail on the
13 Little Magothy with. And I very often, especially, go
14 back there to sail.

15 Now, in 1986, when I started sailing the
16 Little Magothy with this boat, it was very easy to sail
17 around that whole area.

18 This year, it's a little more difficult. My
19 little sailboat actually grounds itself with its center
20 board because of the raise in the bottom level.

21 So in just the short time that I've lived

1 there, from '86 to '92, this little sailboat that skims
2 along the top of the water, its center board touches
3 the bottom now, where it never did before.

4 Q What, if anything, have you observed about
5 the visibility of the water in the Little Magothy?

6 A The visibility of the water has gotten to be
7 much darker and murkier in the last few years than it
8 was when we originally went there in '86.

9 Q Have you had occasion to look over the plans
10 of the developer in connection with the project that's
11 on appeal here?

12 A Yes, I have.

13 Q And do you have any concern about those
14 plans, from your perspective?

15 A From my perspective, as a citizen of Anne
16 Arundel County and a homeowner living adjacent to the
17 property, my concerns are many.

18 The water quality is of real concern to me.
19 I can see from the way the bottom has come up in just
20 the last four -- four or five years -- what it would be
21 if there was more development there. When experts tell

1 me that it will be a mud swamp in five years, I really
2 feel that might be true.

3 Some other observations that I have, and
4 fears that I have, is when I walk into that wooded
5 area. There are stands of trees there that are just --
6 they are magnificent. I mean, two of us standing with
7 our arms out could not go around some of these trees.
8 And you look up, and they look like they go hundreds of
9 feet in the air. And yet, this development is planning
10 to bulldoze down, 65 percent, or 70 percent of these
11 trees.

12 Going back there and trying to canoe back
13 there, and sail back there, there is vegetation back
14 there. There are animals back there. We see deer
15 outside of our window, grazing. My wife got so excited
16 when she saw the first deer, she actually set off the
17 smoke alarm with the energy level in the house, when
18 she saw this buck with a full rack on his head, grazing
19 out there, with a doe and a fawn. These animals are
20 going to be just devastated.

21 Those are real concerns that I have.

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1 Q As a property owner adjacent to this project,
2 and you've voiced the concerns, and I think the Board
3 has a reasonable sense of what your concerns are. Do
4 you have anything else to add to those concerns?

5 A The only thing I would like to add is that we
6 have an opportunity here to stop this madness. We
7 can't replace a tree that's over 200 years old, and 200
8 feet high in the air. This tree has been around since
9 our country was in its infancy, and we can't come and
10 take a little sapling and plant it and say we've just
11 replaced a tree for a tree. It's not going to happen.

12 We can't replace that Little Magothy River
13 and all the fish in it, and the eagles that feed on the
14 fish, which I have observed. We can't replace them,
15 once we go through this and let the development take
16 its course, and just sit back and say, "Oops, we made a
17 mistake." We have to take the action now to stop this
18 and make it environmentally sound. That's my concern.

19 MR. MURRAY: No further questions.

20 CHAIRPERSON HALE: Mr. Blumenthal?

21

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CROSS-EXAMINATION

BY MR. BLUMENTHAL:

Q Mr. Treat, did you purchase your home in 1986?

A Yes, I did.

Q And since that time, it's your testimony that you have observed a degradation to the Little Magothy River, in the area of this subdivision?

A Yes, I have.

Q And that is without any development whatsoever on the property which is the subject of this appeal hearing?

A That is correct.

Q Are you aware of any storm water management facilities that exist, that are utilized by your own Section 1, Woods Landing?

A Mr. Blumenthal, I am only -- I'm a homeowner. I don't -- I don't even know what a storm management system looks like. I just observe what I have seen out on the water and in the woods. I'm not an environmental scientist. I'm not -- I can't quote you

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1 chapter and verse from law books. All I am is a
2 homeowner, and I'm -- and that's what I've observed.

3 Q The question was -- the answer then is you
4 have not observed anything that you recognize as storm
5 water management?

6 A No.

7 Q Have you observed any -- well, have you
8 observed any structures similar to those testified to
9 by Mr. Werner, in terms of pipes for conveyance of
10 storm water, or attenuation trenches, or ditches? Is
11 there anything of that sort which is observable by you?

12 A There is nothing that I would recognize.

13 Q At the time that you purchased your home in
14 1986, were you aware that Section 2, the McCrone plan,
15 which is on the left easel, had been approved by Anne
16 Arundel County but for the availability of public
17 sewer?

18 A When I purchased my home, we were made aware
19 that in the future some building would be taking place
20 on that plot of land. The specifics we did not know.
21 We did not know of any approvals. We just knew that in

1 the future it would be developed.

2 MR. BLUMENTHAL: Thank you. I have no
3 further questions.

4 CHAIRPERSON HALE: Ms. Baer?

5 CROSS-EXAMINATION

6 BY MS. BAER:

7 Q Mr. Treat, do you know how large the acreage
8 is of the portion of this development that you live in,
9 Section 1?

10 A It was my impression that my -- the Section
11 1, that I live in, it was, I believe, was something
12 between 48 and 60 acres. That's what I thought.

13 MS. BAER: I have no other questions. Thank
14 you.

15 CHAIRPERSON HALE: Members of the Board. Mr.
16 Johnson?

17 EXAMINATION BY THE BOARD

18 BY MR. JOHNSON:

19 Q Now, Mr. Treat, I'm just going to ask some
20 questions. This will lead me to questions that I'll be
21 asking the county later.

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1 These large trees that you are talking about,
2 I assume they must be oak trees, poplar trees, from
3 what you described. Are these trees on the perimeter,
4 or are they all through the area in question here?

5 A Mr. Johnson, they are throughout the entire
6 area in question.

7 Q Normally in waterfront areas, you find the
8 old trees on slopes because farmers years ago didn't
9 utilize that property and they left them there.

10 On the perimeter, are there many old trees on
11 the perimeter?

12 A There are many old trees on the perimeter.
13 There are many old trees throughout the middle. It is
14 -- it's a thick standing of tall, magnificent trees
15 throughout the property.

16 Q Okay. What kind of slope is there down to
17 the water from -- I think I heard someone say here that
18 the -- the ground is basically level, but are there any
19 steep slopes down to the Little Magothy?

20 A Yes, there are. There are slopes -- there's
21 a sandy slope throughout where the Little Magothy

1 touches the point of that land, and it's -- I would
2 guess it's way over 20 feet high.

3 MR. JOHNSON: Well, we'll be going out there
4 to see it, but I just wanted to ask you those questions
5 because I'm very concerned about the critical area.
6 But that's something for the county to answer.

7 All right. Thank you.

8 CHAIRPERSON HALE: Any other questions from
9 the Board?

10 Mr. Murray?

11 MR. MURRAY: I have one follow-up question.

12 REDIRECT EXAMINATION

13 BY MR. MURRAY:

14 Q Mr. Treat, can you, based on living in Woods
15 Landing 1, and having looked at the plans for the Woods
16 Landing 2 property, can you compare the relative
17 amounts of green space in the two areas, if Woods
18 Landing 2 is developed as proposed?

19 MR. BLUMENTHAL: I object to the question on
20 the grounds that the green space in Section 1 has
21 nothing to do with whether Section 2 was properly

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1 approved by Anne Arundel County.

2 This is not a rezoning case. It is not a
3 special exception. It is not a variance. It is not
4 whether one likes or dislikes.

5 What is before this Board is, was -- were the
6 subdivision plats which were approved by Anne Arundel
7 County approved in accordance with the statutory
8 constraints. And whether one -- Section 1 compares
9 favorably or unfavorably to Section 2 makes not one
10 iota of difference, or should not make a difference, to
11 the outcome of this case.

12 MR. MURRAY: The purpose of the question, if
13 I may, was to follow up on Mr. Blumenthal's line of
14 questions about storm water management in Woods Landing
15 1.

16 As you heard from the developer's own
17 engineer, one form of storm water management is the use
18 of vegetated strips to absorb or slow down water
19 movement.

20 And my question was intended to elicit
21 information about that kind of storm water management

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1 at Woods Landing 1, since it appears as if it is
2 relevant, at least from Mr. Blumenthal's point of view.

3 CHAIRPERSON HALE: We'll allow you to
4 proceed.

5 MR. MURRAY: Do I need to repeat the
6 question?

7 THE WITNESS: Would you, please?

8 MR. MURRAY: I'll try.

9 BY MR. MURRAY:

10 Q By comparing what you're familiar with in
11 Woods Landing 1, where you live, with what you see on
12 the plans for the proposed Woods Landing 2, what is the
13 relative difference, if you can say, on the green space
14 between the two?

15 A I don't -- what I've seen in Woods Landing 1
16 and one of the reasons we bought our land in the first
17 place was because of the large areas of open green
18 space, and woods, and the co-mingling of the home and
19 the environment.

20 What I have seen on the plans doesn't -- for
21 the new Woods Landing 2 -- does not show much of that

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1 to me. I don't see it there. I'm really comparing
2 what I see with my eyes in real life, which I consider
3 to be quite a bit, to the plans which I don't see much
4 at all. So that -- it scares me when I see that, when
5 I think of the water runoff into the Magothy, and again
6 getting back to that whole bottom rising up routine.

7 MR. MURRAY: That's all.

8 CHAIRPERSON HALE: You may be excused as a
9 witness.

10 (Whereupon, the witness was excused.)

11 MR. MURRAY: My next witness will be Bonnie
12 Treat.

13 Whereupon,

14 BONNIE TREAT,
15 a witness, called for examination by counsel for the
16 Woods Landing Community Association, was duly sworn,
17 and was examined and testified as follows:

18 CHAIRPERSON HALE: Would you give us your
19 name and address for the record, please.

20 THE WITNESS: My name is Bonnie Treat. I
21 live at 424 Cranes Roost Court, in Annapolis.

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1 DIRECT EXAMINATION

2 BY MR. MURRAY:

3 Q Ms. Treat, your husband just testified?

4 A Uh-huh.

5 Q And you would like to add to what he had to
6 say and speak yourself.

7 A Yes.

8 Q You live together at the same location that
9 he testified that he lived at?

10 A Yes.

11 Q And are you familiar with the site? The
12 proposed development site?

13 A Yes.

14 Q Did you become familiar with it for basically
15 the same reasons as your husband did, from looking
16 through the window, and walking around, and so on?

17 A Yes.

18 Q And do you have any concerns about this
19 proposed development?

20 A Yes.

21 Q Okay. Would you tell the Board what your

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1 concerns are?

2 A Would it be all right if I read a little my
3 feelings?

4 Q Certainly, if that's what you'd like.

5 A I'm really an emotional person. I'm sorry.

6 When I was a little girl, I was lucky enough
7 to grow up on a body of water. The water was crystal
8 clear. You could see tiny crabs making their way
9 beneath you. You could see the minnows that were
10 nibbling at your toes.

11 By the time I had my first child, this same
12 body -- which was less than 20 years later -- this same
13 body of water was unfit to swim in.

14 Steps have been taken to clear it up, and
15 it's better, but it will never be the same. Now I can
16 only tell my children what it was like.

17 I know things change, but I feel that the
18 quality of the life should change for the better and be
19 maintained and handed down to our children and our
20 grandchildren.

21 Now we have an opportunity to say, no, it has

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1 to stop. We have to stop destroying our forests and
2 our waterways.

3 It has to start -- it has to stop somewhere.
4 Let it be here, with this delicate little forest and
5 this fragile little river that's fighting for its life
6 and the life within it.

7 When we bought our home in Woods Landing, it
8 was for the very reason that it was not just another
9 house crammed on a quarter of an acre of land.

10 When I come home, I look out into the acres
11 of woods. In the distance, I see the little river. I
12 see the wildlife. I was the one who the first time I
13 saw the deer, set off the three smoke alarms.

14 The point of all this is, I don't want to
15 someday have to explain to my grandchildren that there
16 was once a little forest outside my door, and the patch
17 of mud used to be the river that I canoed on. Hearing
18 about an eagle feeding on this same river is not the
19 same as a firsthand experience.

20 Please let it stop here, before it's too
21 late. Seeing the real thing is better than hearing

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1 stories about the real thing.

2 I'm sorry.

3 Q That's okay. Is there anything you want to
4 add to that?

5 A No.

6 MR. MURRAY: No other questions.

7 CHAIRPERSON HALE: Mr. Blumenthal?

8 MR. BLUMENTHAL: I have no questions.

9 CHAIRPERSON HALE: Ms. Baer?

10 MS. BAER: No questions.

11 CHAIRPERSON HALE: Members of the Board?

12 BOARD MEMBERS: (No response.)

13 THE WITNESS: Thanks.

14 CHAIRPERSON HALE: You may be excused as a
15 witness.

16 THE WITNESS: Thank you.

17 (Whereupon, the witness was excused.)

18 MR. MURRAY: We have, in an effort to
19 minimize the number of witnesses before you today,
20 tried to keep the people who will speak to a minimum.

21 If it's acceptable to the Board, I would

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1 suggest at this time, however, that we -- in order to
2 shortcut the number of people who might have repetitive
3 things to say, just ask the people who are residents in
4 Woods Landing 1, who are here today in opposition to
5 the proposal, simply to raise their hands, or stand up,
6 so that you'll know that's why they are here.

7 MR. BLUMENTHAL: I might add, I think it
8 might be more appropriate if they would sign their name
9 in the Board's records, but doing that would set a
10 precedent which I think is -- would be unfortunate for
11 the Board because, knowing this Board as I do, as a
12 practitioner before you, the number of people that
13 appear here do not necessarily determine a case. If
14 they did, everybody would just try to bring the
15 greatest number of people.

16 But if they would -- my understanding of your
17 rules, though, is if they wish to be recognized, that
18 they sign the witness log before they leave, and that
19 will be sufficient recognition for the Board.

20 MR. MURRAY: That would be perfectly
21 acceptable, as long as they should annotate it in some

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1 way to indicate that they are in opposition. I just
2 want you to know, so that they don't feel like they've
3 come to court, so to speak, to have their day before
4 you and don't get any recognition at all.

5 MR. BLUMENTHAL: If the Board feels that it
6 does not set a precedent, or if you have undertaken
7 this procedure before -- I'm not familiar with it. I
8 am before the County Council. That's a different forum
9 altogether. I thought it was perhaps better -- more
10 appropriate to have people register.

11 CHAIRPERSON HALE: There have been a number
12 of times in the past when we have let people stand or
13 raise their hands. I think we can do that today, but I
14 ask that if you do, that you also sign the witness list
15 before you leave.

16 So if all of those who are here to protest
17 would now raise your hand and then, before you leave,
18 make sure you sign this witness list. Raise your
19 hands.

20 (Whereupon, the protestants raised their
21 hands.)

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1 CHAIRPERSON HALE: Do you want the proponents
2 to raise their hands?

3 MR. BLUMENTHAL: No.

4 CHAIRPERSON HALE: Thank you.

5 MR. MURRAY: Thank you. My next witness will
6 be Betsy Kuhle.

7 CHAIRPERSON HALE: The Board is going to take
8 a break for a couple of minutes. I would tell you that
9 we are going to have to conclude today's hearing by
10 6:30. We do have a scheduled time to continue. We'll
11 just go off the record for a few minutes.

12 (Whereupon, there was a brief recess.)

13 CHAIRPERSON HALE: We'll go back on the
14 record.

15 Mr. Murray, you have a request?

16 MR. MURRAY: Yes. Yes, ma'am.

17 Madam Chairman, Anne Hairston of the Critical
18 Area Commission staff is here and she has advised me
19 that she intended to speak at the end of the day.
20 However, she has a class she needs to get to, and is
21 unable to attend at the next scheduled carryover day.

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1 I have spoken with the other counsel and as a
2 courtesy, we are all in agreement to allow her out of
3 turn, if that's acceptable to the Board.

4 CHAIRPERSON HALE: That is acceptable.

5 Whereupon,

6 ANNE HAIRSTON,

7 a witness, called for examination, was duly sworn, and
8 was examined and testified as follows:

9 CHAIRMAN HALE: Will you give us your name
10 and address for the record, please.

11 MS. HAIRSTON: My name is Anne Hairston, one
12 of the stock planners for the Chesapeake Bay Critical
13 Area Commission. Our address is 45 Calvert Street,
14 second floor, in Annapolis.

15 CHAIRMAN HALE: You may proceed.

16 MS. HAIRSTON: I just wanted to make some
17 comments in regards to the consistency of the project
18 relative to the critical area criteria. I have a
19 letter here that I'll make available to everybody so
20 that you can look at what I'm going to say in writing.

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1 I must apologize because I hadn't realized
2 that you had assumed chairmanship and it's addressed to
3 the previous chairman.

4 To summarize my written comments I just want
5 to outline what we know as the situation. The
6 subdivision apparently received sketch-plan approval
7 substantially prior to both the adoption of the
8 critical area law and the adoption of the county's
9 critical area program.

10 Because of the lack of sewer capacity the
11 lots were prevented from being recorded at that time or
12 final subdivision approval being given because of the
13 county's adequate facilities ordinance.

14 When the critical area law and regulations
15 were passed by the General Assembly they did address
16 this type of situation, even if you look at the
17 situation where final approval had actually been given
18 it is a section in the COMAR, Code of Maryland
19 Regulations 14.15.02.07B2A, which states that lots not
20 individually owned should be consolidated and
21 reconfigured to comply insofar as possible with the

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1 critical area criteria.

2 Another section in that grandfathering
3 subsection, Section "D," also states that nothing in
4 that grandfathering regulation may be interpreted to
5 alter any requirements of two other sections of the
6 criteria; that's the Habitat Protection Area section,
7 which includes the 100-foot buffers in non-tidal
8 wetlands and the letter-dependent facilities
9 requirements.

10 Because of this language in the criteria the
11 Commission just wanted to go on record and state our
12 position. We believe that the applicable Habitat
13 Protection Area regulation, such as 100-foot buffer and
14 25-foot buffers to non-tidal wetlands, should be
15 applied to this subdivision. Because of the -- insofar
16 as possible language contained in the grandfathering
17 section there can be some flexibility applied to other
18 aspects of the critical area requirements such as
19 limited development area requirements which are the 20
20 percent cap on tree clearing, which are the stormwater
21 management for two- and ten-year storms, protection of

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1 steep slopes and those sorts of things.

2 We do feel that there should be a real
3 demonstration of insofar as possible that there should
4 be some sort of showing that they cannot comply if
5 indeed they are allowed to meet less than the minimum
6 criteria.

7 There was one additional law that I did want
8 the Board to be aware of and that was a state statute
9 that was passed by the General Assembly last --
10 actually action has been taken in the two previous
11 sessions, not this year but the two priors -- well
12 actually including this year's, and that's in reference
13 to impervious surfaces. The General Assembly in
14 response to comments the Oversight Committee had
15 received created a state law that changed some of the
16 critical area regulations. It basically allowed some
17 residential lots, one-half acre or less and some
18 non-residential lots a quarter-acre or less, to go
19 above the 15 percent impervious limit up to the 25
20 percent impervious limit on those lots.

21 It retained the 15 percent impervious

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1 surfaces limitation for all other situations which
2 would include any larger lots and include subdivisions.

3 Because that is a state statute now and not
4 merely a regulation and local ordinance that is
5 something that does have to be strictly applied
6 throughout the critical area in the state, consequently
7 we also recommend that the impervious surfaces need to
8 be limited to 15 percent of the total area of the
9 parcel.

10 As a summary, our position is that we'll
11 recommend providing the full 100-foot buffer and this
12 should be applied to tidal waters, tidal wetlands and
13 tributary streams, and 25-foot buffers to non-tidal
14 wetlands and a limitation of 15 percent impervious
15 surfaces at a minimum to be consistent with the state
16 critical area law.

17 CHAIRMAN HALE: Does that conclude your
18 comments?

19 MS. HAIRSTON: Yes. Are there any questions?

20 CHAIRMAN HALE: Mr. Blumenthal?

21 MR. BLUMENTHAL: Ms. Hairston, did you make

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1 the same kind of comments to the Office of Planning and
2 Zoning of Anne Arundel County in ordinary course during
3 the subdivision process of the subdivision which is the
4 subject of this particular hearing?

5 MS. HAIRSTON: We recommended providing full
6 100-foot buffers protection of non-tidal wetlands and
7 all the sorts of things I just recommended. I have
8 copies of those letters here. Can I place them in the
9 record too?

10 CHAIRMAN HALE: Would you identify what
11 you're placing in the record, please?

12 MS. HAIRSTON: They are letters from myself
13 to Penny Chalkley of the Environmental Division of the
14 Office of Planning and Zoning, and they are a normal
15 part of the oversight role that the Commission has in
16 subdivisions that the county approves in a critical
17 area.

18 CHAIRMAN HALE: Can you give us the dates of
19 those letters, please?

20 MS. HAIRSTON: There are two letters, one was
21 on May 1st, 1991 and there is another one on December

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1 2nd, 1991.

2 CHAIRMAN HALE: Did you intend to have this
3 letter addressed to the Board entered as your Exhibit
4 No. 1?

5 MS. HAIRSTON: Whatever works for you all.

6 CHAIRMAN HALE: We have it -- so Exhibit No.
7 1 will be your letter to the Board; Exhibit 2A and "B"
8 will be letters of May 1, '91 and December 2, '91 from
9 you to Chalkley?

10 MS. HAIRSTON: Uh-huh.

11 CHAIRMAN HALE: Any objections to those
12 exhibits?

13 MR. MURRAY: No.

14 MR. BLUMENTHAL: No.

15 (Whereupon, the documents were marked
16 for identification Exhibits No. 1, 2A and 2B and
17 received in evidence.)

18 MR. BLUMENTHAL: I was asking questions, if I
19 may continue I will do so.

20 EXAMINATION BY COUNSEL FOR THE PETITIONER

21 BY MR. BLUMENTHAL:

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1 Q Notwithstanding those two letters which have
2 just been -- the last two exhibits that have been
3 entered Anne Arundel County approved the subdivision
4 without adhering strictly to all of those requests and
5 comments; is that correct?

6 A It appears to be correct.

7 Q Now do you have knowledge that Anne Arundel
8 County is one of the political subdivisions that has
9 promulgated, with state Critical Area Commission
10 approval, its own critical area plan?

11 A Yes.

12 Q And if I showed a copy of that plan to you do
13 you recognize that as the bill 49-88 which I believe
14 constitutes the state Critical Area Plan for Anne
15 Arundel County?

16 A Yes, I do recognize it as the implementing
17 ordinance for the critical area program.

18 Q In order for this plan to have been approved
19 by the Anne Arundel County Council as it was does state
20 law require that the plan first be submitted to the
21 State Chesapeake Bay Critical Area Commission?

1 A It would have had to have been submitted to
2 the Commission after the Council approved it.

3 Q Are you sure of that? I believe the law
4 requires it to go to the Commission first.

5 A There's also a requirement that it be --
6 there is a -- it has to come from the County Council
7 and be submitted to the Critical Area Commission and
8 then it has to go back to --

9 Q The County Council?

10 A -- the County Council and during the initial
11 adoption process you had to have an adoption hearing.

12 Q All right. So if it starts with the County
13 Council instead of the staff as I thought it then goes
14 to the State Critical Areas Commission which has to
15 approve it before it's sent back to the county for
16 approval?

17 A Yes. If your line of questioning is asking
18 whether the Chesapeake Bay Critical Area Commission has
19 approved the county's local program, yes, it has.

20 Q I'm leading up to that, yes.

21 And the County Council is without legislative

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1 authority to change that which was approved by the
2 state without going back to the state Commission again;
3 is that correct?

4 A Amendments to the program do require changes
5 approved by the Critical Area Commission.

6 Q So the plan which we've talked about, which
7 I've asked the Board to take judicial notice of, has
8 been submitted by the County Council to the state
9 Commission, approved by the state Commission and then
10 enacted into law by the County Council?

11 A Yes.

12 Q And in that plan are you aware that on page
13 75 of that bill, 49-88, that Anne Arundel County
14 Council has exempted subdivisions placed by the county
15 on the waiting list for water or wastewater allocation
16 that have complied with the provisions of two other
17 bills, 42-86 and 90-86, that totally exempted them from
18 Anne Arundel County's critical area legislation?

19 A I'm aware that it does exempt them from the
20 provisions of bill 49-88. I'm not aware under what
21 provision in the grandfathering of the critical area

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1 criteria that sort of category would have been created.

2 Q I didn't ask you that, I just asked you if
3 that bill which had --

4 A Editorial comment --

5 Q -- been approved by everybody exempts
6 subdivisions on the sewer list under certain
7 conditions. The answer is yes.

8 A Yes. The --

9 Q That's all right. I think you've answered
10 the question, thank you.

11 Now I'd like to ask you, do you have
12 knowledge of the state code, and in particular Natural
13 Resources Article, Section 8-1810, Subparagraph "D,"
14 which provides that when the local jurisdiction submits
15 an alternative program to the state program and is
16 approved by the Commission the alternative program
17 supersedes the program adopted by the commission?

18 In other words when the county presents its
19 program and it's approved that becomes the program
20 under which the county operates; are you familiar with
21 that?

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1 A I'm not as familiar with that portion.

2 Q Let me ask you to read this and see if that
3 refreshes your recollection.

4 A This is in reference to situations where the
5 Commission originally adopted a program for
6 jurisdictions that did not create their own. Anne
7 Arundel created its own program, consequently 8-1810
8 would not have come into play.

9 Q Well is the program which Anne Arundel County
10 has adopted the law which Anne Arundel County must
11 enforce until it is further amended by request to the
12 Commission or by the Commission?

13 A Yes, it is. I think you do need to realize
14 that bill 49-88 is in the context of the larger
15 critical area program document.

16 MR. BLUMENTHAL: I have no further questions
17 of the witness.

18 CHAIRMAN HALE: Mr. Murray.

19 MR. MURRAY: Thank you.

20 EXAMINATION BY COUNSEL FOR THE PROTESTANTS

21 BY MR. MURRAY:

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1 Q Ms. Hairston, does the critical area law
2 expressly provide for methods of correcting a defect
3 and mistakes in programs once they have been adopted?

4 A Yes, through an amendment passed by the General
5 Assembly.

6 Q And in fact is it not the case that
7 throughout the state that kind of repair process or
8 improvement process is ongoing in different
9 jurisdictions?

10 A It has been initiated in one.

11 Q Would that be Queen Anne's County?

12 A Yes.

13 Q And you've begun some aspects of it in Anne
14 Arundel County, at least from a program evaluation
15 point of view?

16 A There have been some discussions. There's
17 been no initiation of that process.

18 Q Let me ask you to identify a couple of
19 documents, please.

20 Can you identify that document?

21 A This is a staff report presented by myself at

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1 the March 4th Critical Area Commission meeting in Havre
2 de Grace.

3 Q And in sections number two and number three
4 does this report comment on possible program amendments
5 to the Anne Arundel County program regarding
6 grandfathering?

7 MS. BAER: I would object. The basis for the
8 objection is there is -- all this is is a staff report,
9 there's no testimony whether this was reviewed by the
10 Commission or approved by the Commission in any form.
11 If it's going to be presented it should be presented in
12 the context of its approval perhaps, or in the context
13 of comments made about it, or the final action done on
14 it. We don't know any of that.

15 MR. BLUMENTHAL: I was going to object but
16 Ms. Baer beat me to the punch by a millisecond. The
17 law of this case I believe to be bill number 49-88, and
18 as I understand the document and the question it goes
19 towards the possible revision by some other
20 jurisdiction of this bill which is just in the
21 discussion stage. It is not the law of this land and

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1 this Board nor the County can be governed by it. This
2 Board and Anne Arundel County is governed by the
3 adopted statute.

4 So therefore speculation on other possible
5 legislative amendments is inappropriate at this
6 hearing.

7 MR. MURRAY: May I respond to that?

8 CHAIRMAN HALE: Yes. And would you let us
9 know where your line of questioning is taking us with
10 this?

11 MR. MURRAY: Yes, certainly. Ms. Hairston
12 has appeared on behalf of the Commission. She
13 indicated she is here in her official capacity and she
14 testified about specific concerns she has with respect
15 to the application of Anne Arundel County law in this
16 particular project.

17 You will find, I believe, that if you look at
18 the three documents I'm going to ask her to identify
19 that Woods Landing will be mentioned specifically in
20 two as an example of the problem that the Critical Area
21 Commission staff feels exist with respect to Anne

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1 Arundel County's grandfathering provision, and the
2 third one has to do with a general evaluation of what
3 grandfathering is about, what it's supposed to be
4 about.

5 And I would take issue, strong issue, and
6 you're going to obviously -- if you don't anticipate
7 this let me flag the issue for you, and you'll hear
8 this again when we get to argument, that we certainly
9 do not agree with Mr. Blumenthal's assertions that this
10 is a case where this Board is somehow restricted in
11 applying the law of Anne Arundel County with respect to
12 this grandfathering. (A), it's my understanding that
13 the law of the State of Maryland controls, period. The
14 Critical Area Commission doesn't have the authority to
15 override the statute and Anne Arundel County doesn't
16 have the authority to override the statute. Both of
17 them must act in accordance with the statute.

18 If mistakes are made in drafting legislation
19 that's an argument that we can make. If legislation is
20 vague or general and allows interpretations which are
21 in conflict with the state legislation then this Board

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1 is in a position to interpret it properly and
2 correctly, and that will be an argument that we will
3 make.

4 So information about the Critical Area
5 Commission's assessment of this same issue while we are
6 dealing with it here is perfectly relevant. Now
7 whether it dictates a result I'm not going to contend,
8 but it's certainly information you should have it seems
9 to me, and perfectly consistent with Ms. Hairston's own
10 oral testimony.

11 MR. BLUMENTHAL: If I may respond, Madam
12 Chairman.

13 Discussion before a commission does not a law
14 make. The law of this land, as Ms. Hairston has
15 indicated to you, is the program adopted by Anne
16 Arundel County after it was approved by the Critical
17 Area Commission.

18 MS. HAIRSTON: It's a portion of the program
19 --

20 MR. BLUMENTHAL: Just a moment, please, this
21 is my time to speak.

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1 Until an amendment to the law is passed this
2 Board is bound by the law and the law is the plan which
3 was adopted by Anne Arundel County. And this is really
4 a closing-type argument that counsel has broached and
5 now I will indicate to you that in the state code --
6 again, the Natural Resources Article, Section 8-1809,
7 subparagraph "L" there is a mandate which is as follows
8 under the heading of "Correction of Clear Mistakes,
9 Omissions, or Conflicts with Criteria or Laws: If the
10 Commission --" this refers to the state Commission --
11 "determines that an adopted program contains a clear
12 mistake, omission or conflict then the Commission may
13 do various things; it may notify local jurisdiction of
14 a deficiency, it may request the deficiency to amend
15 its program --" and it may do all manner of things, but
16 the state has reposed in the state Commission the
17 authority to correct mistakes, omissions or conflict
18 with criteria or laws. This Board cannot say
19 that a County Council passed ordinance is invalid. You
20 are without that authority. This has been argued many
21 times before predecessor Boards of Appeals, and the

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1 Board unanimously, consistently, has taken the position
2 that if the law is invalid that is for some other
3 tribunal to comment upon. But this Board has the
4 obligation to enforce the laws of this county as they
5 are. If they are determined to be invalid then that's
6 going to send it back again. You must view the case in
7 the posture in which it comes to you under the adopted
8 statutes in effect at the time that you hear it.

9 Speculation by a witness who is a staff
10 member but not a Commission member of the Board, and
11 even if she were a Commission member testimony of
12 concern, testimony of discussion, does not change the
13 law. There may well have been testimony on a contrary
14 point of view. We don't know that.

15 Until the law is changed it is not changed
16 and therefore this kind of line of questioning and
17 documents is totally inappropriate to the law which is
18 going to govern this case before this Board.

19 CHAIRMAN HALE: The Board is going to allow
20 Ms. Hairston to continue and we'll determine at a later
21 date what weight to give that testimony.

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1 MR. MURRAY: I've lost track of the details
2 but I believe we identified this one staff report of
3 March 4th, 1992 --

4 CHAIRMAN HALE: Sections two and three?

5 MR. MURRAY: Yes, ma'am.

6 CHAIRMAN HALE: Do you wish to enter that as
7 your second exhibit?

8 MR. MURRAY: Yes.

9 MR. BLUMENTHAL: Object for the record.

10 MS. BAER: Objection for the record.

11 CHAIRMAN HALE: Your objections are noted.

12 (Whereupon, the document was marked for
13 identification Protestant Exhibit No. 3 and received in
14 evidence.)

15 BY MR. MURRAY:

16 Q And do you recognize this letter dated
17 February 6th, 1992?

18 CHAIRMAN HALE: Excuse me, I'm being
19 corrected on the numbers. Is this protestant's exhibit
20 or Ms. Hairston's exhibit?

21 MR. MURRAY: I'm offering it through her.

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1 I'll be perfectly happy to call it protestant's exhibit
2 if that --

3 CHAIRMAN HALE: That makes it Protestant's
4 Exhibit No. 2.

5 BY MR. MURRAY:

6 Q Do you recognize this letter dated February
7 6th, 1992?

8 A It's a letter from the Commission responding
9 to Mr. Michael Hoffman's request letter to us.

10 Q And it's a letter in which Judge North,
11 Chairman of the Commission, makes a comment or two
12 about the Woods Landing #2 subdivision and
13 grandfathering?

14 A Correct, in response to his letter raising
15 the issues.

16 CHAIRMAN HALE: Does that conclude your --

17 MR. MURRAY: No. Did you have an objection

18 -- MR. BLUMENTHAL: I object for the record
19 on the same grounds as Exhibit No. 2.

20 MS. BAER: May I have a moment to look at it,
21 Madam Chairman?

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1 (Whereupon, there was a brief recess.)

2 MS. BAER: I have no objection.

3 CHAIRMAN HALE: Protestant's Exhibit No. 3
4 will be a letter from the Commission chairman and we
5 will note an objection by Mr. Blumenthal.

6 (Whereupon, the document was marked for
7 identification Protestant's Exhibit No. 3 and received
8 in evidence.)

9 BY MR. MURRAY:

10 Q Ms. Hairston, I'm showing you a letter dated
11 November 1, 1995 --

12 A 1985.

13 Q -- 1985, excuse me -- we'd all be interested
14 to see one from 1995 -- by Tom Demming to members of
15 the Legislative Oversight Committee transmitting a
16 memorandum explaining the context of the grandfathering
17 in relation to the proposed Chesapeake Bay critical
18 areas criteria.

19 Do you recognize that document?

20 A Yes, it's one of the earlier documents that
21 was available during the promulgation of the

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1 regulations that included the grandfathering
2 provisions.

3 Q And it pertains to the state criteria?

4 A Yes, it's advice from the assistant attorney
5 general.

6 MR. BLUMENTHAL: I object on the same grounds
7 as the previous one.

8 I'd like that noted for the record. I'm not
9 going to take time to read this now.

10 MS. BAER: I'm going to object if only
11 because this document is at least 27 pages long, it's
12 not conceivable that I can read it in the next two
13 minutes while the Board waits for me. It's clearly
14 hearsay, it's not a published opinion.

15 I object.

16 THE WITNESS: May I make a comment?

17 MS. BAER: No, it's not your turn.

18 CHAIRMAN HALE: The Board will take it for
19 its probative value.

20 MR. MURRAY: That's all the questions I have.

21 CHAIRMAN HALE: Mr. Blumenthal.

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1 MR. BLUMENTHAL: May I have the Protestant's
2 Exhibits 2 and 3, please.

3 EXAMINATION BY COUNSEL FOR THE PETITIONER

4 BY MR. BLUMENTHAL:

5 Q With regard to your staff report which is
6 Protestant's Exhibit 2 are there those in the
7 Commission that are arguing contrary to your position
8 that wasn't staff?

9 A There was the discussion with a variety of
10 opinions offered on the Commission. The Commission has
11 not taken any action.

12 Q Well is it fair to say that among the staff
13 and/or the Commission there are recommendations that
14 run the gamut?

15 A The recommendation that proceeded from that
16 meeting was to pursue these issues primarily through
17 the contents of review which is coming up within a few
18 months for the Anne Arundel County critical area
19 program.

20 Q I didn't ask you what the recommendation was
21 from the Committee, I asked you before the Committee

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1 were there recommendations that ran the gamut of views
2 from your view to views contrary to your views?

3 A Would you restate the question?

4 Q You believe that there is a difficulty with
5 the grandfathering type provisions in the Anne Arundel
6 County approved critical areas local program, and that
7 they should be changed, from what you've said and from
8 what I've read. Are there others in the staff of the
9 Critical Area Commission who have taken a different
10 point of view in that regard?

11 A On the staff?

12 Q The staff or the Commission. Has anyone
13 expressed a view that is not fully consistent with the
14 view that you have set forth here to this Board of
15 Appeals? Does everybody agree with you?

16 A Obviously not everybody in the world agrees
17 with me on this issue. In terms of what I've presented
18 for -- the material I've presented today is a
19 consistent opinion from the staff of the Critical Area
20 Commission and has been reviewed by various levels
21 within the staff and we have to approach it from the

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1 state critical areas criteria which it is our
2 responsibility to implement.

3 Q Is it your testimony that there are none
4 on the staff who have expressed a contrary opinion?

5 A I'm not aware of any.

6 Q Who has expressed a contrary opinion?

7 A There has been discussion with different
8 opinions regarding the course -- the approach to take
9 to this issue in regards to the larger program issue.

10 Q With regard to your --

11 A Not necessarily the Woods Landing
12 subdivision.

13 Q With regard to Protestant's Exhibit 3, which
14 is the letter from Judge North as chairman, do I
15 correctly interpret this letter as Judge North
16 indicating that in fact the Anne Arundel County program
17 does exempt the Woods Landing subdivision?

18 A Bill 49-88 does exempt the Woods Landing
19 subdivision --

20 Q From the critical area program?

21 A From bill 49-88.

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1 Q And that is the critical area program adopted
2 by Anne Arundel County?

3 A It's the implementing ordinance that was
4 contained in the critical area program. There is --

5 Q It's this piece of legislation --

6 A It is that piece of legislation. That was
7 part of the submittal that was approved by the Critical
8 Area Commission. In reference to this subdivision and
9 the grandfathering criteria there is substantially more
10 information in the grandfathering subsection than was
11 transferred to the county ordinance.

12 Q I just asked you if that letter says that
13 Woods Landing has been exempted from the Anne Arundel
14 County statute which is known as 49-88? The letter
15 does say that, doesn't it?

16 A Yes, and you can read it in the ordinance as
17 well.

18 Q If in fact this subdivision is exempted then
19 the original 1984 plat on the left easel is permissible
20 and that statute does not have to comply with the
21 critical area legislation, if that is the law of the

1 land.

2 A Not bill 49-88. I would not say that it did
3 not have to comply with the critical area criteria.

4 Q Why not? Is it not exempted from 49-88?

5 A If it's exempted from bill 49-88 there are
6 clear positions in the criteria itself which deal with
7 situations prior to program adoption and some which
8 deal with situations after program adoption.

9 Q The criteria in what regulation, bill 49-88?

10 A In the state COMAR, Code of Maryland
11 Regulations. You additionally have a state statute
12 that regulates impervious surface in the critical area.

13 Q Are you saying that this approved and adopted
14 bill 49-88, approved by the State Critical Areas
15 Commission and adopted by Anne Arundel County, is not
16 the law that we're appealing?

17 A No, I'm not. No.

18 MR. BLUMENTHAL: I have no further questions.

19 CHAIRMAN HALE: Ms. Baer, I'm going to
20 apologize, I skipped you earlier.

21 MS. BAER: That's quite all right.

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1 EXAMINATION BY COUNSEL FOR THE COUNTY

2 BY MS. BAER:

3 Q Ms. Hairston, may I take a look at -- if you
4 have it -- perhaps Mr. Blumenthal has it -- Exhibit No.
5 3?

6 CHAIRMAN HALE: It's the letter from Judge
7 North.

8 BY MS. BAER:

9 Q Tell me when the Commission answers inquiries
10 regarding specific projects is it not generally
11 customary to courtesy copy the jurisdiction where that
12 project is being built or developed?

13 A It is, you know, perhaps a nice idea. I'm
14 not aware of a uniform policy for it.

15 Q I see. Now I'm a little confused from some
16 of the things that you said to Mr. Blumenthal so I'm
17 going to read a little portion of this letter and ask
18 you what it means.

19 MR. MURRAY: Objection. The letter speaks
20 for itself.

21 CHAIRMAN HALE: You can cross-examine about

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1 the letter that was put in.

2 BY MS. BAER:

3 Q Let's see, this says "The Woods Landing #2
4 subdivision falls in this category. The Critical Area
5 Commission, whether or not they were aware of this
6 language, approved the bill as part of the county's
7 critical area program in June, 1988. Because any
8 action to overturn local decisions must be undertaken
9 through the court system it is difficult to file a
10 workable appeal given the existing language."

11 Does that mean that -- is it your
12 understanding that that is a decision by Judge North
13 not to intervene in this matter?

14 A I don't know that that letter constitutes in
15 itself a decision. I would suggest that it perhaps
16 represents the thought at that time.

17 Q Does the Critical Area Commission have an
18 attorney assigned to it from the AG's office?

19 A Yes, it does.

20 Q And what is that attorney's name?

21 A George Gay.

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1 Q And has Mr. Gay from time to time entered an
2 appearance and intervened on the part of the Critical
3 Area Commission in cases that it, the Commission, felt
4 were of high importance so that the Critical Area
5 Commission stand could be heard?

6 A He has filed appeals in cases for us.

7 Q And he has intervened in cases?

8 A I guess I'm unaware of the distinction.

9 Q In cases where there may already be an appeal
10 might he enter an appearance on behalf of the
11 Commission?

12 A I would suppose he has the authority. I'm
13 not sure whether we've done that to this point but I
14 suspect it certainly could be done.

15 Q Did the Critical Area Commission file an
16 appeal in this case?

17 A I'm not aware of any. We are however
18 choosing to --

19 Q There's no question pending.

20 A -- testify.

21 Q And you would agree that the letter from

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1 Judge North says that the subdivision is exempt from
2 the county's critical area bill?

3 A That's what it says, yes.

4 Q And would you also agree that Judge North
5 sets out that was the way to change or address the
6 concerns of Mr. Hoffman is through the regular
7 modification process of the local program?

8 A I don't think it tries to suggest that it
9 would address all of Mr. Hoffman's concerns. It does
10 suggest that that is a avenue that the Commission will
11 be pursuing.

12 Q Okay, now you mentioned something about Queen
13 Anne's County, perhaps counsel asked you a question
14 regarding Queen Anne's County. What happened in Queen
15 Anne's County that was being referred to?

16 A Is this relevant to --

17 Q I'm asking the questions. What happened in
18 Queen Anne's County regarding its program where the
19 Commission may have taken issue at some element of the
20 program?

21 A How much of an answer do you want?

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1 Q Let's start at the basics. Did there come a
2 time when the Commission felt that Queen Anne's County
3 program was not acceptable?

4 A Approximately two years ago Queen Anne's
5 County was contacted with regards to deficiency of --
6 that the Commission staff had become aware of and was
7 requested to make some changes to address those
8 deficiencies. Since then --

9 Q Okay.

10 A -- there has been substantial correspondence
11 back and forth that would have perhaps partially
12 addressed some of those concerns, and not fully
13 addressed the perceived deficiencies. At the March 4th
14 Commission meeting of this year the Critical Area
15 Commission took an action that within 30 days if Queen
16 Anne's County had not submitted a proposal that did
17 meet all of the perceived deficiencies and addressed
18 them in an acceptable manner they would use the
19 authority granted to them under the amendment 8-1809 to
20 request changes to local programs to correct clear
21 omissions, mistakes or conflicts with critical area

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1 criteria.

2 Q Okay, now so this started in a process two
3 years where in writing the Commission, and perhaps I'm
4 simplifying a little bit, the Commission wrote a letter
5 to the appropriate authority in Queen Anne's County and
6 said, you have a problem, you have a deficiency in your
7 program; is that right?

8 A Yes.

9 Q Now has the Critical Area Commission ever
10 written to Anne Arundel County and said, you have a
11 deficiency in your program?

12 A No.

13 Q And sometime down the road after some time of
14 negotiation between the Critical Area Commission and
15 Queen Anne's County authorities some problems were
16 resolved and others were not; is that correct?

17 A Yes.

18 Q And when there got to be a point where there
19 seemed I guess to be no resolution in sight the
20 Critical Area Commission then put in writing again a
21 sanction, if you will, for Queen Anne's County to come

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1 into compliance, or have a plan for compliance, within
2 30 days; is that correct?

3 A Yes.

4 Q Has that equivalent process been done between
5 the Critical Area Commission and Anne Arundel County?

6 A No, and I haven't suggested that it has.

7 Q Now the Protestant's Exhibit No. 2, which is
8 a draft staff report, were you in attendance at the
9 March 4, 1992 meeting?

10 A Yes.

11 Q And I see on this document it says "Issue,"
12 it says "Discussion of changes in Anne Arundel County
13 critical area program and action needed," it says, "for
14 information only." So this is only
15 informational, isn't it?

16 A Yes, it is.

17 Q And it's not a law?

18 A No, it's not.

19 Q And there's no way of telling whether it will
20 be a law?

21 A No.

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1 Q And what if anything was done with the
2 recommendations that specifically address the Woods
3 Landing development?

4 Now I'm not worried about the other
5 paragraphs, just those that specifically use the term
6 "Woods Landing subdivision," what if anything was done
7 about those paragraphs; were they discussed?

8 A There was discussion.

9 Q And were they passed upon or approved or
10 anything like that?

11 A That's typically not a procedure that the
12 Critical Area Commission does for "information only"
13 staff reports.

14 Q Now how long have you been with the staff?

15 A About three and a half years.

16 Q Would it be safe then to say that you were
17 not a part of the staff when the great blue book, the
18 COMAR provisions were established?

19 A That is true.

20 Q In fact would it be fair to say that perhaps
21 the staff has had an entire changeover, with perhaps

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1 the exception of Dr. Taylor, since that time?

2 A Yes.

3 Q So it is possible that there is some
4 understanding that was different by the staff at the
5 time the critical area program was approved for Anne
6 Arundel County than what your understanding is now?

7 A Yes.

8 Q Does the fact that there has been a change in
9 staff, an almost 100 percent change in staff, could
10 that explain why something which was approved by the
11 Commission at the outset is now looked at differently?

12 A That may be part of it. There's also the
13 experience of four years of implementation, perhaps
14 changes in staff in other jurisdictions that have
15 perhaps altered the interpretation and implementation.
16 It's very difficult to say at this point other than
17 looking at what is written in both the local ordinance
18 and in the state critical area criteria and its goals
19 that are supposed to guide the interpretation.

20 Q So just generally there's a lot of
21 individuality involved here, the individual staff makes

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1 a big difference on what -- how the program would have
2 been looked at years ago as opposed to how the staff
3 might look at it now?

4 A I'm not sure if I would agree entirely with
5 that.

6 Q But you do think that there is a difference,
7 or that you agree that there is a different staff on
8 hand?

9 A Yes.

10 Q Okay. Now would it surprise you to find out
11 that there have been 13 major subdivisions approved on
12 the Broadneck peninsula in the critical areas for which
13 the Critical Area Commission has not given any negative
14 comments regarding the 100-foot buffer and the 15
15 percent impervious surface?

16 A Regarding the 100-foot buffer?

17 Q Right.

18 A What I believe you're referring to is the
19 list of major subdivisions on the Broadneck peninsula
20 that are placed on the wastewater allocation waiting
21 list. And there is also information I think in that

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1 that also covers how the county was trying to have
2 those comply insofar as possible, obviously in its
3 attempted implementing COMAR section 14.15.02.07B2A.

4 Q What I'm asking you though is are there in
5 fact approved subdivisions within the critical area
6 which -- for which the Critical Area Commission did not
7 send similar comments as the one sent for this
8 subdivision?

9 A I'm not aware that there would be any for the
10 100-foot buffer violation.

11 Q How about the 15 percent impervious surface?

12 A There may have been prior to the enactment of
13 the state statute, that would have been subject to the
14 grandfathering insofar as possible.

15 Q Now you indicated that there was some
16 legislation pending before the legislature, Maryland
17 State Legislature, this year regarding that provision;
18 is that correct?

19 A The impervious surfaces?

20 Q Yes.

21 A Yes.

1 Q Now obviously --

2 A The session ended.

3 Q But obviously that -- or maybe -- let me ask
4 youth is: was it passed as emergency legislation?

5 A I don't know.

6 Q So would it be fair to say you don't know
7 when that law becomes activated, when it becomes
8 effective?

9 A Which law?

10 Q The law in the General Assembly this year
11 regarding impervious surface.

12 A Regarding the variances?

13 Q Uh-huh? You don't know what the effective
14 date of that law is?

15 A I've been informed that the effective date
16 would be July 1 of this year.

17 Q That's not in effect now?

18 A The ability for the county to issue
19 variances?

20 Q Right, that's not in that -- that law is not
21 in force now?

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1 A No, but the one that the General Assembly
2 passed in the previous year, which is the one I'm
3 referring to in this letter, should be effective at
4 this point in time.

5 Q Now is that concern lots of -- approximately
6 quarter-acre lots?

7 A It concerns all of the impervious surface
8 legislation that was entirely restated in that statute.
9 It's in section 8-18 --

10 Q So it's my understanding then that --

11 A Eight point three.

12 Q -- your position is that even though it's not
13 the law of Anne Arundel County and even though we have
14 a letter to Mr. Hoffman from Judge North saying that
15 the law of Anne Arundel County is that this subdivision
16 is exempt, that your position is that even though it's
17 exempt entirely, not insofar as possible, but entirely
18 exempt that --

19 A From bill 49-88.

20 Q -- from bill 49-88 that somehow there's some
21 other law that should be applied and we should ignore

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1 the county law?

2 A There should be other laws that are applied
3 in addition to the county law.

4 Q And what do you suppose those laws are, what
5 do you say those laws are?

6 A This would be the state statute on impervious
7 surface limitations, those portions of the
8 grandfathering criteria which were not transferred to
9 -- not represented in the county program and which
10 addressed development prior to the adoption of bill
11 49-88.

12 Q And would you agree that the only way the
13 county can disobey its own law, if you will, is by
14 changing the law?

15 A I wouldn't ask me a legal advice question
16 like that.

17 Q Well let me put it to you this way, would you
18 agree that the COMAR is one of the sources that you
19 refer to as one of the sources of criteria that you are
20 applying against the Anne Arundel County program?

21 A Restate the question, please.

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1 Q Are you saying that at least in part the
2 COMAR ought to be applied in Anne Arundel County?

3 A The critical area law --

4 Q As it's embodied in COMAR, that's right.

5 A Well there's a distinction there. We have
6 the critical area law that's being termed as a state
7 statute and --

8 Q That's correct, I'm asking about the COMAR.

9 A Then there are, you know, what I'm
10 particularly making in reference to here is the
11 subsection in that criteria that refers to
12 grandfathering and subdivisions that have received
13 approvals prior to the adoption of the county's
14 critical area program. Once the county's critical area
15 program is implemented that is then the way that the
16 critical area program is enforced.

17 Q Would you disagree with Section 8-1809
18 subsection "E" of the state law that says that "If the
19 governing body of the local jurisdiction wishes to
20 change any part of the approved proposal before
21 adoption it has to submit it to the Commission for

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1 approval in the processing," right.

2 A Correct.

3 Q And so the Commission had an approval at that
4 stage and thereafter a change -- part may only -- may
5 not be adopted until it's approved by the Commission;
6 is that right? I mean we have a whole line, a
7 formation, in which the Commission oversees the
8 adoption of a local plan and the amendment to a local
9 plan; would you agree with that?

10 A Yes.

11 Q So if Anne Arundel County wants to change
12 provision of its plan the Commission has to approve it
13 before it becomes effective; is that correct?

14 A Correct.

15 MS. BAER: I have no other questions.

16 CHAIRMAN HALE: Members of the Board?

17 Mr. Lamartina.

18 EXAMINATION BY MEMBERS OF THE BOARD

19 BY MR. LAMARTINA:

20 Q Ms. Hairston, I sat here listening to you
21 comment on -- giving us information or your

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1 interpretation of state law, the State Critical Area
2 Commission regulations, COMAR regulations, Anne Arundel
3 County bill 49-88. In order for me to put that in the
4 proper perspective and determine what weight to give
5 your testimony, and forgive me if you've given us this
6 testimony before in prior cases, I understand you're
7 listed as planner; what's your educational background
8 that gives you an expertise in this area?

9 A From a scientific perspective I've obtained a
10 Bachelor of Science in forestry and natural resource
11 management from Virginia Tech and a Master of Science
12 in forestry and -- soils from the University of
13 Minnesota, and I've had three and a half years of
14 experience in this position dealing with the planning
15 issues.

16 Q Just what does your position entail; what do
17 you do?

18 A In my position I am responsible for -- well,
19 there's several different functions. One of which is
20 commenting on the projects and the general function of
21 the Commission for oversight, for project review for

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1 subdivisions, variances, special exceptions, all those
2 sorts of county approvals. My jurisdictions include
3 Anne Arundel, Baltimore and Cecil counties. I am also
4 responsible for handling any program changes,
5 researching issues for the State Critical Area
6 Commission and administering grants to the counties to
7 implement the critical area program.

8 Q So basically now only from a scientific
9 standpoint your expertise does not really lend itself
10 to a legal standpoint or interpretation of legislation?

11 A Not from a legal standpoint. I can merely
12 present the information that is the advice that is
13 given to us from our assistant attorney general and
14 through familiarity with the different laws,
15 regulations and ordinances involved in implementation
16 of our program in particular.

17 Q All right. Then is it correct that the Anne
18 Arundel County bill 49-88 has not been determined
19 deficient by your Commission; is that correct?

20 A No, it is not --

21 Q Any portions in that been determined

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1 deficient?

2 A There hasn't been any action -- the
3 Commission requiring any correction.

4 Q What would trigger that? What would trigger
5 some action of the Commission to require correction on
6 bill 49-88?

7 A Well I don't know if it requires a specific
8 trigger. There has been information presented to the
9 Commission. They have suggested that we obviously
10 follow other procedures. The Commission --

11 Q When you say "we" who are you referring to,
12 Anne Arundel County as "we" or --

13 A For "we" it would be the Critical Area
14 Commission. The Commission has the authority to ask
15 for changes to a program in certain circumstances.

16 Q Who would they ask? Would they ask the
17 County Council, Planning Office?

18 A It would be the County Council and County
19 Executive because that's who the program was submitted
20 from. There are of course other options for pursuing
21 program changes that don't necessarily involve that

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1 route and I think the sentiment of the Commission is
2 that those channels should be followed. And that
3 clause in the amendment is not something that the
4 Commission has to follow to ask for changes, it is
5 merely as kind of as a last resort.

6 Q To your knowledge has the Commission asked
7 for any changes in any of our legislation in 49-88?

8 A It hasn't been -- the Commission as a body
9 has not asked for it. You know, there are always
10 ranges of interpretation -- and difference of opinion
11 in regards to the Commission's staff and the county
12 staff.

13 I mean specifically in reference to the
14 grandfathering language there is a great deal more
15 specificity in the state critical area criteria than
16 was incorporated into the county ordinance and the
17 Commission approved it and they had that the entire
18 range of the grandfathering language would be
19 represented by that language.

20 Q You say there was inconsistency or -- with
21 49- 88?

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1 A No, specificity.

2 Q All right, less specificity with regard to
3 grandfathering --

4 A Yes.

5 Q -- and thus when implemented the Commission
6 thought it would be implemented in another fashion; is
7 that what you're telling us now?

8 A I don't know what the Commission thought then
9 and I really can't speak to it, that was before I was
10 on staff.

11 Q But regardless then obviously whatever Anne
12 Arundel County is doing with regard to implementation
13 the Commission hasn't felt it necessary to in any way
14 change that legislation or get Anne Arundel County to
15 change that legislation or to even address that issue?

16 A Well there's been discussions on the staff
17 level but nothing that's enveloped the Commission as a
18 body or the County Council as a body that I'm aware of.

19 Q Would you agree that to embrace your
20 philosophy -- for this Board to embrace your philosophy
21 or philosophical point of view with regard to this

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1 specific subdivision that we would have to disregard
2 county law?

3 A I don't believe so.

4 Q What would we rely on if we didn't rely on
5 bill 49-88, what can we rely on to --

6 A Well I don't believe that a county can pre-
7 empt state law. For example the 15 percent impervious
8 surface limitation in the state statute would not be
9 something that the county could pre-empt by the
10 provisions in, you know, their 49-88 to the contrary.

11 Q That's the specificity you felt that was not
12 handled in detail in 49-88?

13 A No, this is a question of what is the status
14 of state statute versus county ordinance. I don't know
15 where the Board of Appeals laws stand in reference to
16 that, but it's my understanding that counties cannot
17 pre-empt state law.

18 MR. LAMARTINA: That finishes my questions,
19 thank you.

20 CHAIRMAN HALE: Mr. Edmonston.

21 BY MR. EDMONSTON:

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1 Q Yes, Ms. Hairston, I seem to get the feeling
2 that you're saying the county has adopted a law
3 regarding this and for the most part that's followed,
4 but there is a state law that would pre-empt in certain
5 conditions anything that might be in that county law;
6 is that correct?

7 A The state law -- state regulations, the
8 COMAR, would I believe have a different status.

9 Q Okay, so that even though there is a state
10 law -- I mean a county law that's been enacted to
11 follow these procedures there is still a certain
12 overriding requirement based on state law even though
13 the county law has been totally accepted?

14 A The county law, you know, has been adopted
15 and implemented but it wasn't -- it doesn't exist in a
16 vacuum and we do have, in both the criteria, the state
17 law which, you know, sets out the goals of the program
18 requirements for buffers, that sort of thing.

19 Q Okay, so the fact that the county adopted an
20 ordinance that was negotiated with the Critical Areas
21 Commission and it was finally adopted doesn't mean then

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1 that is the only thing that has to do with
2 environmental matters before the county?

3 A No, sir, not from our perspective as the
4 Critical Area Commission. You know, we feel that you
5 do need to still implement the critical area criteria
6 and we're going to comment on that both at a project
7 stage and work towards program stages to make sure that
8 the critical area criteria law are implemented.

9 MR. EDMONSTON: Fine, thank you.

10 CHAIRMAN HALE: Ms. Hairston, would I be
11 correctly understanding you, as a follow-up to these
12 questions, to say that you believe that the state
13 critical area law prevails re: the grandfathering issue
14 because it is more specific than Anne Arundel County's
15 law 49-88?

16 THE WITNESS: The grandfathering provision is
17 not in state law 8-18, it's in the Code of Maryland
18 Regulations, 14.15 which was authorized by that state
19 law. The applicability of the grandfathering
20 provisions would be that there is information that's
21 contained in those grandfathering provisions that

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1 address the situations prior to adoption of the
2 county's program.

3 CHAIRMAN HALE: Thank you.

4 Mr. Johnson.

5 BY MR. JOHNSON:

6 Q Ms. Hairston, this is really a question for
7 the county, they're going to have a month to think of
8 an answer for it, but I want your opinion on it.

9 Concerning the exemption and the
10 grandfathering and all, you know, I understand that,
11 but I look back on these dates, 10/26/83 was when the
12 original sketch plan was submitted for Woods Landing.
13 On 8/6/84 preliminary approval was given by Mr. Frank
14 Ward.

15 Now on 4/18/91 the final plan was submitted
16 to the county, that's Exhibit No. 9, and sometime after
17 that a final approval was given. I don't know when
18 that was, the last date I have on anything here is one
19 of your letters to Penny Chalkley and it's dated
20 December 2nd.

21 Now if the final approval came some time

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1 after December 2nd, 1991 why are we talking about
2 grandfathering? I mean this comes at least three and a
3 half years after the critical area legislation went
4 into effect.

5 I just want to hear your opinion on that.

6 A It's probably going to be substantially
7 similar to what the county will say in that it says
8 that because in bill 49-88 it contains a provision that
9 exempts subdivisions on a wastewater treatment
10 allocation waiting list. I don't know that that is,
11 you know, consistent with the way that it was supposed
12 to be treated under the grandfathering provisions in
13 the criteria but that is the language that's in the
14 approved county ordinance.

15 You know, it could certainly be argued that
16 the -- and I guess that's what I'm trying to argue, is
17 that the critical area criteria as passed by the
18 General Assembly intended subdivisions in this category
19 to comply if they received final approval after
20 December 1st, '85 they were, you know, intended to
21 comply completely. Even assuming that the, you know,

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1 if the county had not forced them to not record the
2 lots, if that situation had not been present it would
3 have fallen under the section of grandfathering that
4 said subdivisions that received final approval before
5 but are still in common ownership you should
6 consolidate and reconfigure lots so that you are
7 complying insofar as possible and it's our feeling that
8 there should be some sort of reason that they can't
9 comply, you know, in terms of the configuration of the
10 land or some sort of concrete reason that should be
11 present for them to justify not complying.

12 Q Okay, but my basic question was if this thing
13 was approved on December 3rd, 1991 do you think it
14 should be grandfathered in?

15 A Not to the point in which it was. In any
16 case the provisions cite the 100-foot buffer should not
17 be grandfathered at all and that was also made clear in

18 --

19 Q Well that's my concern is the 100-foot buffer
20 and the 15 percent impervious surface.

21 Thank you very much, because I know the

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1 Chairman wants to get us out of here.

2 Any more questions?

3 CHAIRMAN HALE: Yes, there will be.

4 Mr. Blumenthal?

5 EXAMINATION BY COUNSEL FOR THE PETITIONER

6 BY MR. BLUMENTHAL:

7 Q When you speak of the impervious provisions
8 that were recently enacted and enacted last year are
9 they part of the critical area legislation?

10 A Yes, they're an amendment to Section
11 8-1808.3.

12 Q So if a subdivision is exempt from critical
13 area legislation it's exempt from those legislation
14 provisions too?

15 A I'm not aware of how -- if you're trying to
16 imply that an exemption from bill 49-88 exempts it from
17 every other state law I don't --

18 Q I didn't ask you that, I said --

19 A Then what are you asking?

20 Q Well I'm asking you -- the first question was
21 were the legislative amendments to which you made

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1 reference amendments to the critical area legislation
2 of the state code, and you answered yes.

3 A Yes.

4 Q And I then asked you the follow-up question,
5 well then if one though is exempt from the entire body
6 of legislation one would be exempt from those
7 amendments. If one is exempt from the critical area
8 law per se amending the critical area law would not
9 affect the exemption.

10 A I suppose in theory you would be correct, I
11 just can't -- on the situation which you're exempt from
12 the critical area law as a state statute.

13 Q Well Judge North said in that letter that
14 this subdivision and I assume others similarly situated
15 are exempt from the state program.

16 A No, from the provisions of the county
17 ordinance --

18 Q Which is the operative program under which
19 Anne Arundel County enforces regulations in critical
20 areas.

21 A It's the implementing ordinance.

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1 Q What else does Anne Arundel County use to
2 enforce its ordinance -- is this the ordinance?

3 A It's the county ordinance that you do have
4 responsibility to not conflict with state laws --

5 Q Whoa, whoa, just a moment. Where do you say
6 that we have the responsibility? Did not the State of
7 Maryland Critical Area Commission approve this program?

8 A Yes, it did.

9 Q And was that not approved under the COMAR
10 regulations?

11 A Yes, it was, 1809.

12 Q And by analogy --

13 A I'm sorry, it's not under the COMAR
14 regulations it's under the state statute.

15 Q -- by analogy if Anne Arundel County had not
16 passed its program until after the state program took
17 effect and then passed its program Anne Arundel
18 County's program supersedes the program adopted by the
19 State Commission?

20 A Again it's a situation I don't believe has
21 occurred.

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1 Q Well is there a distinction between a program
2 adopted after the state adopts its program or before
3 the state adopts it's program, and if so why is there
4 such a distinction?

5 A It's -- looking at Section 8-1810, that
6 provision was there to allow jurisdictions in Anne
7 Arundel County or, you know, any of the other 60
8 jurisdictions in the critical area that did not want to
9 as a jurisdiction prepare a program the Commission
10 would then prepare that program to meet the
11 implementation of the critical area regulations.

12 Q Correct. And now let's assume that that
13 happens -- let's assume it happened, although it didn't
14 in Anne Arundel County, and then Anne Arundel County
15 approves this program, as it did, and the state
16 approves it, that program supersedes the state program
17 by this statute?

18 A Again you're referring to 18 --

19 Q Just answer my question -- hypothetically
20 would that program supersede the state program?

21 A If the Commission had prepared an entire

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1 program and required its enactment by the county, and
2 then the county had later proposed a program to replace
3 the one that the Commission had prepared --

4 Q And it was approved does the county program
5 then supersede the state program?

6 A Then it would have superseded the program
7 that the Critical Area Commission would have prepared
8 for Anne Arundel County. This is not critical area
9 regulations, it's not superseding critical area law.

10 MR. BLUMENTHAL: Thank you, I have no further
11 questions.

12 CHAIRMAN HALE: Mr. Murray?

13 EXAMINATION BY COUNSEL FOR THE PROTESTANTS

14 BY MR. MURRAY:

15 Q Ms. Hairston, I just have a couple of follow-
16 ups.

17 You have spoken about Section 8-1808.3 a
18 couple of times today.

19 A Yes.

20 Q And just to clarify, is that the section
21 which forms the basis for your opinion that -- or

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1 position that the impervious surfaces on this project
2 may not exceed 15 percent?

3 A Yes.

4 Q And does it provide specifically that this
5 section of the law applies notwithstanding any other
6 provision of this title or any criteria or guideline of
7 the Commission adopted under this --

8 A Yes.

9 MR. MURRAY: Thank you, no further questions.

10 CHAIRMAN HALE: Ms. Baer.

11 MS. BAER: The Board's indulgence.

12 No further questions.

13 CHAIRMAN HALE: This witness may be excused.

14 THE WITNESS: Thank you very much.

15 CHAIRMAN HALE: Or you may be dismissed as a
16 witness. I understand you may not be able to return
17 and the Board --

18 THE WITNESS: I have to leave tonight. I can
19 check my schedule for the other date.

20 CHAIRMAN HALE: You are excused then.

21 THE WITNESS: Thank you.

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1 CHAIRPERSON HALE: The Board is going to end
2 the hearing for tonight. We will reconvene for -- to
3 continue on May 4th, in the James Senate Office
4 Building.

5 This Board will conduct an on-site inspection
6 of the property on Tuesday, April 21st, at six p.m. No
7 testimony will be taken. It's very important that no
8 one attempt to communicate in any way with a member of
9 this Board during that on-site inspection, or at any
10 other time.

11 This hearing is presently recessed and will
12 be reconvened the date that was announced.

13 MR. BLUMENTHAL: And will that be at 6:30
14 p.m.?

15 CHAIRPERSON HALE: Yes.

16 MR. BLUMENTHAL: Thank you.

17 (Whereupon, at 6:34 p.m., the hearing
18 was adjourned.)
19 .
20 .
21 .

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No. 26	Subdivision Plats	59	59
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BEFORE THE ANNE ARUNDEL COUNTY BOARD OF APPEALS

IN THE MATTER OF:

WOODS LANDING #2
JOINT VENTURE

:
:
: CASE NO.: BA 10-92A
:
:
:

May 4, 1992

Pursuant to Notice, the above-entitled
hearing was held before the ANNE ARUNDEL COUNTY BOARD
OF APPEALS, BARBARA HALE, CHAIRPERSON, commencing at
6:39 p.m., there being present:

BOARD MEMBERS PRESENT:

WILLIAM C. EDMONSTON, SR.
DAVID M. SCHAFFER
F. GEORGE DEURINGER
JOHN W. BORING
ANTHONY V. LAMARTINA
P. TYSON BENNETT, Counsel to the Board

ON BEHALF OF THE APPLICANT/DEVELOPER, WOODS LANDING
#2 JOINT VENTURE:

HARRY BLUMENTHAL, ESQUIRE

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ON BEHALF OF THE PROTESTANTS, WOODS LANDING COMMUNITY
SERVICE ASSOCIATION, INC., AND STEVEN AND BONNIE TREAT,
AND ALBERT AND BECKY KULLE:

JOHN MURRAY, ESQUIRE

ON BEHALF OF ANNE ARUNDEL COUNTY:

JAMIE BAER, ESQUIRE

ALSO PRESENT:

JOE ELLBRECHT

REPORTED BY: ELAINE REICHENBERG, NOTARY PUBLIC

- - -

P R O C E E D I N G S

CHAIRPERSON HALE: The Anne Arundel County Board of Appeals is convened this 4th day of May, 1992, to hear case number BA 10-92A, Woods Landing #2 Joint Venture, to continue from an administrative decision of the Office of Planning and Zoning, granting approval of Subdivision No. 73-519 and Project No. 91-065 for Woods Landing, Section Two, Plats one through three, on property located in part on the south side of Woods Landing Drive, and in part on the south side of Woods Landing Drive, and in part on the west end of Woods Landing Drive, and bounding the southern end of the Little Magothy River, Annapolis.

This Board has already conducted an on-site inspection of this property.

Also, we have one request from a member of the Board. Mr. Johnson, Joseph Johnson, was unable to be here tonight, and has requested that he be allowed to continue with this case through listening to the recording, the tapes which are being made. Is there any objection to that request?

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1 VOICE: None here.

2 CHAIRPERSON HALE: Mr. Blumenthal? Ms. Baer?

3 MR. BLUMENTHAL: No objection.

4 MS. BAER: No objection.

5 CHAIRPERSON HALE: Thank you very much.

6 At the prior hearing, we had completed
7 questioning and cross-examination of Ann Hairston, and
8 are ready for Mr. Murray to call his next witness.

9 MR. MURRAY: Betsy Kulle. Is this a stand-up
10 or a sit-down?

11 CHAIRPERSON HALE: Either -- wherever you're
12 more comfortable.

13 Whereupon,

14 BETSY KULLE,
15 a witness, called for examination by counsel for the
16 Protestants, was duly sworn, and was examined and
17 testified as follows:

18 CHAIRPERSON HALE: Would you give us your
19 name and address for the record, please.

20 THE WITNESS: My name is Betsy Kulle,
21 K-U-L-L-E, 496 Fawns Walk, Annapolis, Woods Landing.

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1 CHAIRPERSON HALE: You may proceed.

2 MR. MURRAY: Thank you.

3 DIRECT EXAMINATION

4 BY MR. MURRAY:

5 Q Ms. Kulle, you live in Woods Landing?

6 A Yes, I do.

7 Q Where is your house on the location to the
8 site of the builders?

9 A We are one court over from the main part of
10 the development. I can see the trees and the property
11 from the back of my house back up to the visual part of
12 that part of the property.

13 Q And how long have you lived there?

14 A A little over three -- three-and-a-half
15 years.

16 Q Are you familiar with the site of the
17 proposed development?

18 A Yes, I am.

19 Q And how did you become familiar with it?

20 A Through various meetings and with -- well,
21 mostly Mr. -- and with our Community Association

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1 session, plus -- meetings with yourself.

2 Q All right. Are you familiar with the site
3 itself as opposed to the proposed development?

4 A Yes. I frequently have walked this site, and
5 have walked the entire thing. I walked both the
6 interior and along the edge and on the water, on the
7 shoreline itself.

8 Q And you have familiarized yourself with the
9 development plans?

10 A Yes. The reason that my husband and I moved
11 to Woods Landing was because we're very fond of the
12 area, and I'm really kind of keenly aware of some of
13 the environmental measures that have to be taken to
14 make the bay a liveable place. And we found that Woods
15 Landing kind of fit that bill because it was beautiful
16 with, you know, the proximity of the water without
17 being right on it, and it seems to me it's been done in
18 a very sensitive way.

19 When we heard of this proposed development
20 last May, we were very concerned. First of all, as you
21 probably have noticed, it's a very lovely stand of all

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1 trees. It doesn't look like it's ever been used for
2 timber or for farmland. And it sits -- one of the few
3 lovely places left in the Broadneck area.

4 Also, the main concern I had was the Little
5 Magothy River and the health of it. It gets shallower
6 all of the time. I notice that at lower tide, when I'm
7 walking the site, you can see the bottom where it --
8 more often than you could before. And I know that the
9 mouth -- that we tried coming in a sailboat, which we
10 haven't spent a great deal of time in the water with,
11 and the mouth is so narrow. It's so shallow on both
12 the sides, especially on the -- side of it that you
13 can't get in. It's only, like, a foot or so deep.

14 I brought a chart, which I'd like -- so the
15 people could see the depth, the water depth of the
16 creek itself. It's four to five feet deep with about
17 one foot outside of this very, very narrow opening, and
18 the opening is extremely -- now I'm not even sure what
19 that width is, but I would say it's 150.

20 Q Have you been in the water itself?

21 A Well, I've been around the water, yes. And

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1 as to the mouth from the Magothy River side, that I
2 can't come in, you know.

3 We just couldn't stand by and watch another
4 creek on the bay suffer and, you know, suffer what it
5 appears to me from the runoff and the pollution that
6 would be caused by this kind of development there to
7 happen again. So that's why I became involved in it.

8 I believe that this can be done in a
9 sensitive way. It can be done like Woods Landing has
10 been done, with setback, without removing all the
11 trees, and living within the natural confines of that
12 piece of land.

13 There's one bank over here on this side of
14 the property that's steep and very sandy. If you touch
15 it, it crumbles. And from the erosion there, it's
16 bound to be high. And it's very little in the way of
17 grass or anything like that to stop it if it reaches
18 this point.

19 But I believe, you know, if -- I think that
20 most people that I have worked with at Woods Landing
21 feel very strongly that it can be done. It just needs

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1 to be done in a sensitive way.

2 Q Have you observed any wildlife on the site?

3 A Yes. There's a lot of blue herons, again
4 back in the small cove back here. I've observed five,
5 six blue herons at different times. Their offspring
6 are nesting on the edges of the site right now.

7 There are numerous -- I mean, birds that you
8 can't imagine, and migratory birds coming through the
9 air as well as nesting birds. There is, you know, the
10 usual fox and raccoon and that kind of thing, but an
11 enormous amount of wildlife. The place seems alive,
12 especially now, with the spring and that kind of thing.
13 And a lot of the wildlife nest in there and then, you
14 know, and use the area around Woods Landing itself for
15 feeding and that sort of thing.

16 Q Do you have any other concerns about this
17 development from your perspective?

18 A Well, just that there's too many houses, and,
19 mostly, I think, too many houses because of the amount
20 of trees that have to be removed.

21 Week before last, we had a thunderstorm over

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1 in our neck of the woods, and in the drainage areas and
2 some of the parts of Woods Landing was knee-deep in
3 water because it rained so very hard. If this had been
4 disturbed at that particular time, the silt that would
5 have loaded into this creek would have been incredible.
6 And it worries me a great deal.

7 I just think that it's criminal to have this
8 kind of thing when you know what the results are going
9 to be. You're positive that it's going to have a
10 detrimental effect on the creek, and to continue with
11 it, it just doesn't make any sense at all to me.

12 Q Is this the chart that you've been making
13 reference to?

14 A Uh-huh.

15 Q Entitled "The Severn and Magothy River
16 Sanding in Feet." Does it have a date on it?

17 A Yes, I think it does. June of '91.

18 CHAIRPERSON HALE: Is there any objection to
19 this exhibit?

20 MR. BLUMENTHAL: No objection.

21 MS. BAER: No objection.

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1 CHAIRPERSON HALE: That would be Protestants'
2 Exhibit No. 5, the Severn and Magothy river chart of
3 June, '91.

4 (Whereupon, the document was marked for
5 identification Protestant's Exhibit No. 5 and received
6 in evidence.)

7 CHAIRPERSON HALE: Would you mark for the
8 Board, please, the sandy bank you referred to.

9 THE WITNESS: Oh, the bank, yes. I'll try
10 to.

11 (Whereupon, the witness marked the
12 exhibit as requested.)

13 BY MR. MURRAY:

14 Q So that the Board will be clear when it looks
15 at this exhibit, could we -- you have highlighted the
16 site in yellow already, correct?

17 A Uh-huh.

18 Q And you outlined the Little Magothy in blue;
19 is that correct?

20 A Yes.

21 Q And now you have put a star where the sandy

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1 bank is.

2 A Yeah, and a circle around it. That's very
3 rough. This is awfully small.

4 CHAIRPERSON HALE: Mr. Blumenthal.

5 MR. BLUMENTHAL: Thank you.

6 CROSS-EXAMINATION

7 BY MR. BLUMENTHAL:

8 Q Mrs. Kulle, you've indicated that you would
9 not be adverse to the development of the property which
10 is the subject of this hearing if that development were
11 comparable to Woods Landing One.

12 A Without the tree removal, yes.

13 Q Well, are you aware -- do you have knowledge
14 of what tree removal took place in order to accommodate
15 Woods Landing One, which includes the very home that
16 you enjoy today?

17 A No, I don't.

18 Q Do you have any idea of the total amount of
19 area in Woods Landing One compared to the total acreage
20 of Woods Landing One, which is now covered by
21 impervious surfaces, such as rooftops and driveways,

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1 that wasn't prior to any construction at all?

2 A I don't know the exact numbers, no.

3 Q And do you have any idea of implementation of
4 storm water management controls, if any, in Woods
5 Landing One?

6 A I'm not familiar -- I'm not a builder or a
7 planner. I'm a citizen.

8 Q Thank you. I have no further questions.

9 CHAIRPERSON HALE: Ms. Baer.

10 MS. BAER: No questions, thank you.

11 CHAIRPERSON HALE: Members of the Board.

12 BOARD: (No response.)

13 CHAIRPERSON HALE: You may be excused as a
14 witness.

15 MR. MURRAY: William Lanham.

16 CHAIRPERSON HALE: Raise your right hand,
17 please.

18 Whereupon,

19 WILLIAM LANHAM,

20 a witness, called for examination by counsel for the

21 Protestants, was duly sworn, and was examined and

1 testified as follows:

2 CHAIRPERSON HALE: Would you sign the witness
3 list, please.

4 For the record, please give us your name and
5 address.

6 THE WITNESS: My name is Bill Lanham for the
7 firm of Landtech, Incorporated. Our office is at 1470
8 Solomon's Island Road in Annapolis.

9 DIRECT EXAMINATION

10 BY MR. MURRAY:

11 Q Mr. Lanham, what line of work do you do?

12 A I'm a landscape architect, and I also do
13 engineering with the firm. I've been in this business
14 for approximately 25 years.

15 Q What kind of license do you have to practice
16 your profession?

17 A I'm a registered landscape architect.

18 Q And do you have any other professional
19 business experiences in your career?

20 A I worked for the Department of Planning
21 Commission for Prince George's County for six years. I

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1 was also a builder for two years in Columbia, Maryland,
2 and a land developer in Prince George's County,
3 developing the village of -- Marlboro in Upper Marlboro
4 for two years, for Fairfax Savings in Baltimore. And
5 the rest -- developing and planning business in
6 landscape architecture in Maryland. I've also done
7 quite a bit of work in the Chicago area, Florida, North
8 Carolina, and Virginia.

9 Q In connection with your current work, do you
10 have occasion to -- real estate development?

11 A No, I've been pretty intensely involved in
12 land development in Anne Arundel County since 1986,
13 actually. I've been in the county previously between
14 the years 1971 and 1976. I joined the firm of Dewberry
15 and Davis. In 1986 I embarked on a number of projects
16 -- offered in the county, and prepared a number of
17 sketch plans, serving in the engineering necessary for
18 those projects to come to fruition. And, then, a few
19 years ago, I left Dewberry and Davis to join the firm
20 of Landtech.

21 Q In connection with your work, do you have to

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1 apply building codes of Anne Arundel County?

2 A Yes, absolutely. It is the policy of the
3 county that the codes are to be followed as explicitly
4 as possible. In some counties, planning agencies
5 believe it -- , but this county is pretty strict about
6 code enforcement, particularly with zoning and
7 subdivision regulations, of course, including the
8 current environmental regulations which I've been
9 working with since 1986.

10 Q Have you had occasion, before, to be
11 qualified as an expert witness before any
12 administrative board or court of law?

13 A Yes, before this Board and also Prince
14 George's and Montgomery County in the court --

15 Q I submit to qualify Mr. Lanham as an expert
16 landscape architect.

17 MR. BLUMENTHAL: No objection to that
18 qualification.

19 MS. BAER: No objection.

20 CHAIRPERSON HALE: Okay. He's been before
21 us. We'll take him in.

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1 BY MR. MURRAY:

2 Q Mr. Lanham, are you familiar with the
3 proposed development of Woods Landing Two?

4 A Yes. I've been on the site several times in
5 connection with this work. I must -- I would be remiss
6 in not saying that on my first visit to the site that I
7 was very much impressed with the method in which the
8 phase one was implemented.

9 I think that the builder deserves a lot of
10 credit for that effort, and he was very conscientious.
11 There are very few builders in that category, and I'm
12 sure that the Board would be impressed, also, with it,
13 particularly the tree preservation and the placement of
14 the units among those trees.

15 The project did proceed some of the
16 environmental regulations, but it obviously was a very
17 conscientious effort on the part of the builder to
18 place those 100 units or so on about 25 acres, which is
19 against the 40 units per acre. That's pretty high
20 density. But I think it was an admirable job.

21 Q Now, in connection with your review of the

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1 proposed development, did you have an opportunity to
2 evaluate the number of -- percentage of trees that
3 would need to be removed in accordance with the
4 developer's plan?

5 A I looked at the plans and plats that were
6 proposed and eventually approved by the county for
7 Section Two. And this particular set of plans was
8 developed in conjunction with Planning and Zoning, but
9 was not subject to critical area, criteria per se, in
10 that it was on a waiting list for --.

11 The plan proposes to clear approximately 60
12 percent of the trees. The site is 99 percent wooded.
13 There's a buffer to the shore of the Little Magothy
14 proposed, I think, 50 feet minimum. The proposed
15 impervious surface is about 28 percent, and the density
16 is 4.9 or five units per acre.

17 In comparison to critical areas, impervious,
18 again, to 28 percent, the maximum committed in the
19 critical area project now is 15 percent. The shore
20 buffer is 100 feet, and, of course, that is expanded in
21 many cases where there is 15 percent slopes that

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1 perhaps would increase that buffer and, for certain
2 types of soils which are known to be very susceptible
3 to erosion, that buffer can be increased, also.
4 Sometimes it can be more than 90 feet.

5 And, in terms of clearing, 60 percent is
6 proposed. A critical area calls for 30 percent maximum
7 with a replacement of 1-1/2 to one. Generally, they're
8 looking at 20 percent, with a replacement of one to
9 one, so there's a penalty of 1-1/2 to one, 30 percent
10 clearing.

11 Q Did you have occasion to look at whether this
12 site, with the proposed number of housing units, could
13 be configured in a manner that satisfied the critical
14 area criteria that you just mentioned?

15 A We took a look at the property that was being
16 -- approved for Section Two, and I brought an exhibit
17 with a series of overlays. We can go over these. This
18 is going to be a little awkward, but we'll try it. Can
19 you all see those?

20 The gray shading, the dark shading here is
21 the existing dwellings at Woods Landing in Section One.

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1 The lighter gray is the roadways and parking areas, all
2 of which, of course, is impervious. Section One
3 consists of about 25 acres, which includes a majority
4 of Woods Landing Drive and a short -- up to here.

5 There's a double tennis court here in
6 addition to half the recreation here. This is the rec
7 area that was dedicated to the residents as a part of
8 Woods Landing Section One.

9 Section Two is located in this part of the
10 site, with the blue here representing the edge of the
11 Little Magothy River.

12 The first overlay is the plan that's approved
13 with the majority of the dwelling in its place in this
14 area of the site adjacent to the river. The darker
15 shade here is the actual building envelopes themselves.
16 The off-street parking and driveways to the units, they
17 appear to all have either a single or a double-car
18 garage. It's located in here. This is simply an
19 extension of Woods Landing as a public street backed up
20 to a cul-de-sac at this point.

21 There is some woodlands to be preserved

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1 between the units, and this location here. And, of
2 course, the buffer, which was proposed at 50 feet along
3 the Magothy here, is located in this -- here. The 100-
4 foot shore buffer is somewhat up into the buildings.
5 They're more into the site.

6 There are a few units located here in just a
7 small section adjacent to the recreation area. And
8 then the recreation area, the majority of it, was
9 proposed up at Woods Landing, next to Woods Landing
10 Drive and Bay Head Road, out near the front of the site
11 about three or so acres.

12 We had looked at the plans and thought they
13 were plans that were well prepared, but we didn't
14 understand why the units -- why there were no units
15 placed up there versus perhaps taking some of this
16 density and putting it over in that location there.

17 So we had proposed a reconfiguration, if you
18 will. This is a suggested alternative which does
19 several things.

20 One, it places more of the units in that area
21 over there, and these units are left off so that this

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1 can become part of the recreation area, and it all
2 becomes more or less contiguous.

3 With the density that is pushed in front of
4 the site, one could easily put the same building
5 envelopes here just left of them and maintain the 100-
6 foot buffer. And this reconfiguration changes the net
7 clearing from the 60 percent to 48 percent. We hold a
8 100-foot buffer to the shore, and it's expanded, for
9 example, here, it slopes -- impervious drops from 28
10 percent to 21 percent, and the density remains the
11 same.

12 Q And to summarize, just by moving some of the
13 density to the corner of the site, you were able to
14 achieve substantial changes in the impervious surface
15 and the deforestation; is that correct?

16 A We think so, and we're not sure why that
17 alternative wasn't considered, but there's nothing in
18 the record to indicate that it was prohibited. At
19 least, we didn't find anything. There is some concern,
20 I understand from certain individuals, that if that
21 plan had been changed, then the ballgame would have

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1 been over because of the fact that the project was
2 grandfathered, essentially, by the critical area, a
3 program of the county which had -- project on the
4 waiting list --

5 Q Did you prepare any kind of reports
6 summarizing your comments?

7 A Yes, I did.

8 MR. BLUMENTHAL: Before the witness passes
9 these out to the Board members, might counsel have the
10 opportunity to review it?

11 CHAIRPERSON HALE: Oh, absolutely. Give all
12 of them to the clerk, please.

13 Mr. Murray, are you also going to attempt to
14 get the site plan in?

15 MR. MURRAY: It's in.

16 CHAIRPERSON HALE: Would you share that with
17 --

18 (Whereupon, there was a discussion off
19 the record.)

20 CHAIRPERSON HALE: Is there any objection to
21 the site plan with overlays?

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1 MR. BLUMENTHAL: Yes, Madam Chairman, I
2 object to them on the basis that the overlays are
3 predicated on the base map, which is by an engineering
4 firm which is not the engineering firm that prepared
5 the subdivision plats which are the subject of the
6 hearing.

7 I'd also object to the pamphlet. I have no
8 objection to the first page, which, as I understand, is
9 a recapitulation of the testimony of the witness,
10 although there appears to be a little more information
11 on it, but I think it's appropriate.

12 But we'll object to the introduction of the
13 companion attached letter of April 28th, 1992,
14 addressed to Mr. Murray, counsel for the Protestants,
15 in that, having reviewed it, I believe that letter
16 contains facts and matters that have not been testified
17 to and are -- by the witness and are outside the scope
18 of his expertise.

19 And he is here; he has made his testimony, so
20 I think it's appropriate to therefore introduce this
21 letter. You have his oral testimony, and it's on the

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1 record. For the convenience of the Board, I think this
2 outline of comparisons to which he testified is
3 entirely appropriate as a convenience item for the
4 Board members.

5 So, in summary, I would object to the
6 introduction of the letter labeled the 28th, as I
7 believe it is at variance with the -- some of the
8 testimony of the witness, and somewhat it appears to be
9 outside his scope for which he has been accepted as an
10 expert. And I object to the introduction of the base
11 map and the overlays that are on it, since the witness
12 did not use the subdivision plat which is -- that which
13 is the approved plat before this Board.

14 CHAIRPERSON HALE: Ms. Baer.

15 MS. BAER: Madam Chairman, I would join in
16 the objection for the letter dated April 28th, 1992,
17 addressed to Mr. Murray.

18 In addition to those things that Mr.
19 Blumenthal has already articulated, it appears that
20 this letter draws certain conclusions which are within
21 the Board's domain to draw, that it attempts to make

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1 legal conclusions as well as factual conclusions for
2 which there is no basis. It's only conclusive.

3 So I join in that objection.

4 CHAIRPERSON HALE: Mr. Murray.

5 MR. MURRAY: I hardly know where to begin.

6 Let me begin with the letter. Mr. Lanham's
7 testimony thus far, I believe, is summarized
8 substantially in this letter, 2-2/3 page letter. There
9 may be some points in it that he hasn't gone over yet,
10 but I had intended to conclude from Mr. Lanham's
11 testimony at this point, so I'm perfectly prepared to
12 go through it in whatever detail is thought
13 appropriate. Mr. Lanham is certainly available to be
14 cross-examined on the points contained in the letter.

15 The objection made is that something in the
16 letter is beyond the scope of Mr. Lanham's expertise,
17 but without identifying what it is, though, I have some
18 difficulty responding to that particular objection,
19 other than to say that Mr. Lanham, I believe, will
20 state that his letter contains information that is of
21 the sort that he worked with every single day.

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1 And with respect to the drawings, I believe
2 Mr. Lanham has already indicated that he used the
3 drawings to indicate -- to illustrate his analysis.
4 Where the drawings came from and who did them, or
5 whether they are a 100 percent perfect rendition is not
6 the point. Just like any other illustrative testimony,
7 the purpose is, does it show what he is trying to tell
8 you, and that it clearly does.

9 (Whereupon, there was a discussion off
10 the record.)

11 CHAIRPERSON HALE: Mr. Blumenthal, do you
12 want to comment again about the site plan?

13 MR. BLUMENTHAL: Yes, I would. The purpose
14 of the witness's testimony, as I understand it, him
15 having been qualified as an expert in landscaping, he
16 then proceeded to illustrate his concept of what he
17 says would be feasible in terms of subdividing.

18 In the first instance, he is not a civil
19 engineer. His expertise is in landscaping. And,
20 secondly, assuming arguendos, the Board found it
21 appropriate for the witness to testify to the facts of

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1 the matter which he has done so.

2 He has predicated his testimony upon plats,
3 which are not the plats before this Board. And he has
4 said, rather definitively, "This can be done. I don't
5 know why they didn't do it." And he has given to you
6 an illustrative example with overlays on plats which
7 are not the plats before this Board's consideration.
8 He's used, as a basis of his hypothesis, something
9 other than was readily available to him, assuming he
10 has the requisite expertise to do that, and he chose
11 not to do it for whatever reasons.

12 So I again renew the objection on the basis
13 that his testimony and those plats, he can say what he
14 did for showing areas of the trees. He has no
15 expertise to say to this Board, "These are
16 engineeringly feasible plats." And all the more so
17 when he predicated them upon plats which are not the
18 plats before this Board.

19 CHAIRPERSON HALE: Mr. Murray.

20 MR. MURRAY: Perhaps I could get over some of
21 these perceived concerns by asking Mr. Lanham a couple

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1 of additional questions, if I may.

2 CHAIRPERSON HALE: Please.

3 BY MR. MURRAY:

4 Q Mr. Lanham, are you familiar with the plats
5 prepared by and submitted to the county by the
6 developer?

7 A Yes.

8 Q Okay.

9 A We had some fairly poor copies that were
10 printed for our client, who is the president of the
11 Woods Landing Association. We just happened to inherit
12 with the project a plan which was used as a base map
13 with an overplan of the county drawing. It's been with
14 the county for quite some time now, that was actually
15 prepared by McCrown (phonetic), who outvoted to do the
16 original engineering for your planning phase one.

17 It sufficiently illustrates the topography
18 and other features of the land that existed during the
19 development phase one, and compared favorably with the
20 plans. We thought it appropriate to use a county
21 document as opposed to using other plans that were

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1 given to us by somebody else which were, unfortunately,
2 fairly poor copies.

3 Q Is the base of the drawings that you used for
4 your illustration purposes materially and substantially
5 the same for purposes of outlining the property and
6 locating its features as the ones submitted by the
7 developer?

8 A Absolutely. In fact, the record drawings of
9 the storm water management for phase one -- phase one.

10 CHAIRPERSON HALE: The Board will accept
11 those drawings in with that understanding of their
12 origin.

13 Now, do you want to ask him some other
14 questions to cover what's in that letter?

15 MR. MURRAY: Yes. Thank you.

16 BY MR. MURRAY:

17 Q Mr. Lanham, in looking through the letter
18 dated April 28th, would you review with the Board --
19 and this is a fairly short letter -- the key points in
20 the letter, some of which I think you've already
21 touched on here today, beginning right at the top.

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1 A We looked at a number of documents to
2 determine if this development was done in a sensitive
3 way, and one of which that would fall under the county
4 policy of projects in critical areas which are exempted
5 of grandfathers. The policy is -- maybe it's been not
6 projected, but --

7 MR. BLUMENTHAL: Objection. The policy of
8 the county speaks for itself. This witness is
9 qualified as a landscape architect only. I object to
10 any comments that he would make to the Board that are
11 outside of the scope of his expertise.

12 MR. MURRAY: It seems to me that if, as I
13 believe he plans to testify to, without objection, that
14 he deals daily with site plans in land development in
15 Anne Arundel County, that the comment by him as to the
16 nature and application of the very rule that he deals
17 with on a day-to-day basis is perfectly appropriate.

18 MR. BLUMENTHAL: Madam Chairman, I deal with
19 site plans every day, too, with development in Anne
20 Arundel County, but I don't perceive that I'm qualified
21 to comment upon them and an expert other than perhaps

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1 for legal nuance.

2 CHAIRPERSON HALE: Ms. Baer.

3 MS. BAER: I would join the objection. I
4 don't believe that there's anyone more qualified than
5 county employees to characterize how they apply the law
6 of Anne Arundel County, and I cannot perceive of how
7 this gentleman could effect that.

8 (Whereupon, there was a discussion off
9 the record.)

10 CHAIRPERSON HALE: The Board will note that
11 it's a subjective opinion that he's expressing and
12 determine what weight to give that opinion. You may
13 continue.

14 THE WITNESS: The county policy is wrapped
15 around a -- insofar as -- which should leave things
16 wide open. I have -- I would have to admit to you that
17 I have not done a project which requires a
18 determination, that the record was quite clear --

19 MS. BAER: Madam Chairman, I'm going to renew
20 my objection based on the statement of this witness,
21 that he's never dealt with the county before on this

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1 policy. So how could he possibly assess how he deals
2 with it? I move to strike the previous testimony.

3 MR. MURRAY: Madam Chairman, Mr. Lanham was
4 involved in the developing process. He was asked to
5 look at this project in the context of the normal
6 development process. He does not have to have had
7 every experience that humankind can have to be able to
8 evaluate this particular development in its relative
9 environmental sensitivity.

10 (Whereupon, there was a discussion off
11 the record.)

12 CHAIRPERSON HALE: Mr. Murray, if your client
13 has not had specific personal experience working with
14 the county in the area of the "insofar as possible,"
15 then we should leave that out of his testimony.

16 MR. MURRAY: As a matter of correction, Mr.
17 Lanham is not my client. He is a witness, Barbara.

18 CHAIRPERSON HALE: I'm sorry, witness.

19 BY MR. MURRAY:

20 Q All right. The chart, then, on page two is
21 the one we had previously indicated simply compares

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1 actual versus critical area requirements.

2 CHAIRPERSON HALE: Could you speak up a
3 little, please.

4 MR. MURRAY: I'm sorry.

5 THE WITNESS: Yes. On page two is a chart
6 that compares critical area requirements of woodland
7 clearance, buffers, impervious surfaces, and density
8 permitted in critical area -- what was proposed, and
9 has now been approved for Woods Landing.

10 BY MR. MURRAY:

11 Q And the next section deals with storm water
12 management?

13 A Correct.

14 Q What was your evaluation there?

15 A This is a very complex subject, and one which
16 I'm not particularly qualified to comment on, but we
17 found that the --

18 MR. BLUMENTHAL: Objection again. The
19 witness, by his own statement, precedes his statement
20 by saying he's not particularly qualified to comment on
21 it. If he is not, then this Board ought not to be

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1 receiving his testimony as that of an expert.

2 CHAIRPERSON HALE: Ms. Baer.

3 MS. BAER: I join in that objection.

4 Specifically, this line of questioning was to
5 authorize, if you will, substantiate the introduction
6 of a document. We now have two areas of information
7 that -- within the four corners of the document which
8 the witness now tells us he really doesn't know
9 anything about at all, or he's really not qualified to
10 comment on. And so I would renew my objection to the
11 document being entered at this time, as well as object
12 to the testimony.

13 CHAIRPERSON HALE: Mr. Murray.

14 BY MR. MURRAY:

15 Q Mr. Lanham, is it true that you don't know
16 anything about storm water management?

17 A Absolutely not.

18 Q Is it true that you know a lot about storm
19 water management.

20 A I've worked with engineers since 1972 on this
21 very issue.

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1 Q Have you, in your day-to-day business that
2 you make a living in, do you deal with storm water
3 management, design and effect?

4 A My role is, in the planning end, with
5 septicide areas and the methodology for infiltration,
6 working with engineers as the project manager to insure
7 the projects comply with the law. And our observation
8 for this project was that the system of --

9 MR. BLUMENTHAL: Objection. Madam Chairman,
10 the witness works with qualified people. He has not
11 yet testified he is one of those persons qualified in
12 storm water management, and he's about to give
13 conclusions now.

14 MS. BAER: I would join in that objection on
15 -- I work quite regularly with Mr. Pumphrey, and he's a
16 civil engineer that's registered to practice that art
17 in the state, but that doesn't make me a civil
18 engineer. I work with him, and I work with Mr.
19 Ellbrecht, and I worked with Mr. Suldano, and that
20 doesn't make me a planner. So I join in that
21 objection.

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1 (Whereupon, there was a discussion off
2 the record.)

3 THE WITNESS: I understand that -- testimony
4 -- one observation we did make --

5 CHAIRPERSON HALE: Excuse me, please. We're
6 --

7 (Whereupon, there was a discussion off
8 the record.)

9 CHAIRPERSON HALE: Mr. Murray, can you tell
10 the Board, or ask questions of your witness that would
11 indicate whether this is solely his opinion or whether
12 it's based on his work with other experts in the field
13 who helped him prepare this report. Can you give us a
14 basis there?

15 MR. MURRAY: Sure.

16 BY MR. MURRAY:

17 Q Mr. Lanham, in preparing this letter which
18 you did, and discussing with us for five or ten minutes
19 here, did you get input from any other experts in your
20 office?

21 A Yes. Robert D'Azo (phonetic), who's the

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1 principal in the -- expertise.

2 Q And did his input specifically involve the
3 work quality and storm water management issue?

4 A Yes.

5 Q And did you continue to express in this
6 letter when it is based in part on his input?

7 A That's correct.

8 CHAIRPERSON HALE: The Board normally lets
9 work in when it has been joined by other experts in the
10 field to make comments. You may continue.

11 BY MR. MURRAY:

12 Q Would you complete your comments about the
13 storm water management system.

14 A The system, which is a system of proposed
15 infiltration attenuation provides a -- we didn't
16 believe would have long-term water qualities --
17 abilities. We are finding that infiltration, after a
18 period of time, ceased to work altogether or works less
19 effectively in over periods of maybe eight to ten years
20 without maintenance, and some of these infiltrations
21 are given maintain -- below ground will not provide the

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1 water quality that they were intended to provide.

2 The one issue that we did find with the plans
3 that was curious -- again, back to the exhibit that was
4 discussed earlier tonight, was that the density for the
5 project is primarily along the river front. I would
6 submit to you that that may have been a marketing
7 decision. Had it been mine, I probably would have
8 considered the same thing.

9 However, it appears, again, that the three
10 acres that are more or less up near Bay Head Road was
11 not considered as a location for a density. And the
12 only reason that I have been able to understand is that
13 there was some fear that changing the original approved
14 plan did not -- the implication that there was concern
15 that the plans would not continue with the grandfather
16 status.

17 But the density near the river, since it is
18 all wooded and since it's the most sensitive area,
19 could have been moved to the location near Bay Head
20 Road. It has an existing street, which is adequate.
21 It has water and sewer line pipes there. It's also an

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1 opportunity next to it to provide storm water
2 management. There's a low area that is partially
3 impounded by Woods Landing Road or Drive, and it
4 appeared to seem to be a particular candidate for
5 retrofitting and providing storm water management at
6 that location. That's what our main points are.

7 Q Well, then, based upon your relatively
8 limited analysis, you conclude that more could be done
9 to comply with critical areas insofar as possible?

10 A That's correct.

11 MR. MURRAY: Your witness.

12 CROSS-EXAMINATION

13 BY MR. BLUMENTHAL:

14 Q Mr. Lanham, when were you first employed to
15 do the analysis which you have now shared with us this
16 evening?

17 A I think it was -- we were called right before
18 the end of the year. And I think, officially, we
19 started right after the first of the year.

20 Q Sir, you've been on this now since January 1
21 of 1992?

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1 A Approximately.

2 Q All right. This is now May something or
3 another. Having undertaken this analysis, have you
4 shared your thoughts with the Office of Planning and
5 Zoning for their reaction at any time?

6 A I had a casual conversation with Penny
7 Chalkley, and also Joe Ellbrecht. I was interested in
8 how the original builder had been, in my opinion, so
9 conscientious in placing that many units on that land,
10 and, also, the "insofar as possible" policy that seems
11 to be so wide open.

12 Q Did the conscientious original builder employ
13 any storm water management techniques as the --

14 A Not that I know of.

15 Q So there are none on Section One at the
16 moment?

17 A No.

18 Q What happens to the water, then, that runs
19 off the impervious areas of Section One, if you know?

20 A No, I wouldn't. From what I've observed out
21 there, most of it goes directly into the bay. Due to

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1 the various storm water collections devices.

2 Q Do you know the percentage of trees that the
3 original builder cut down in order to accommodate
4 Section One?

5 A No.

6 Q Well, then, how do you make the observation
7 or jump to the conclusion that too many trees have been
8 cut down for Section Two?

9 A The percentage is stated on the plans as 60
10 percent.

11 Q Well, do you know if 60 percent or greater of
12 the trees were cut down from Section One?

13 MR. MURRAY: I'd object to that. The issue
14 here is whether or not this particular project does or
15 does not comply with the law, whether Woods Landing One
16 does or does not comply with the law. It's already
17 been indicated it was built before most of the
18 regulations that we're talking about.

19 MS. BAER: Madam Chairman, if I may, it has
20 been this witness who has taken great extremes in
21 telling us and comparing Section One with Section Two.

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1 All Mr. Blumenthal has done is carry that one step
2 further. He has opened the door. If he didn't want to
3 discuss Section One, we shouldn't have heard any of
4 that testimony.

5 CHAIRPERSON HALE: It's the proper cross-
6 examination.

7 MR. BLUMENTHAL: I might add, for the record,
8 I am somewhat -- with having this pair on my side, that
9 it is a pleasure --

10 (Laughter.)

11 BY MR. BLUMENTHAL:

12 Q My question was, do you have any knowledge as
13 to the percentage of trees that were cut down to
14 accommodate what you have described as "Section One
15 being built by a very sensitive builder"?

16 A No.

17 Q Now, again, with regard to the plans upon
18 which -- that have been put into evidence and which you
19 have worked upon for five months, have you ever shared
20 those plans with the Anne Arundel County Office of
21 Planning and Zoning for their input to determine

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1 whether or not your concept works within the confines
2 of "insofar as possible"?

3 A No.

4 Q Is there a reason why you have not?

5 A I didn't feel I had the license.

6 MR. BLUMENTHAL: All right. I have no
7 further questions.

8 CHAIRPERSON HALE: Ms. Baer. Repeat that,
9 please.

10 THE WITNESS: I didn't feel I had the
11 license.

12 CHAIRPERSON HALE: We're going to take a
13 break in a few minutes and work on the mikes.

14 MR. BLUMENTHAL: Madam Chairman, I have no
15 questions, but I -- this testimony coming from this
16 witness obviously is -- I'd like to vote in opposition
17 to the land plans for my own client. I obviously have
18 not had the opportunity to discuss this with Mr.
19 Werner, who is here, and testified previously.

20 I'll ask that the witness be held available
21 for possible further examination as opposed to asking

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1 the Board to give us a half-hour right now to look at
2 plans to come back, if that's appropriate.

3 CHAIRPERSON HALE: We can do that.

4 MR. BLUMENTHAL: Thank you.

5 CHAIRPERSON HALE: Ms. Baer.

6 CROSS-EXAMINATION

7 BY MS. BAER:

8 Q May I ask you to look at, I believe it was,
9 Protestants' Exhibit No. 6, which is the proposed --

10 CHAIRPERSON HALE: Why don't we stop for a
11 moment and let me enter these. They're not really
12 entered on the record.

13 No. 6, then, will be the site plan with
14 overlays, and No. 7 will be the face page of a report
15 summarizing comments. And we will not admit the letter
16 because we've had the contents in his direct testimony.

17 (Whereupon, the documents were marked
18 for identification Protestants' Exhibit Nos. 6 and 7,
19 and were admitted into evidence.)

20 CHAIRPERSON HALE: Excuse me, please. Go
21 ahead.

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1 BY MS. BAER:

2 Q As I understand it, this is the suggested
3 reconfiguration overlay; is that correct?

4 A That's correct.

5 Q Could you show me where the rec area is on
6 this, please.

7 A The additional rec area is located over
8 there, and there is also areas that could be devoted to
9 that.

10 CHAIRPERSON HALE: Can you identify for the
11 record what you're saying, please.

12 BY MS. BAER:

13 Q Do you have a colored pen that you could use
14 to show where you had designated a rec area? Where
15 have you designated a rec area on this plan? Now,
16 you're --

17 A The area would be in addition to the rec area
18 that exists and would be a continuation along the south
19 side of Woods Landing.

20 Q You've outlined an area in one in red ink.
21 Is that -- does that include the current rec area for

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1 Section One?

2 A No.

3 Q And this is entirely new?

4 A Yes.

5 Q And how much property does that entail?

6 A It's about three acres.

7 Q And could you show me, please, where the
8 former rec area would have been by comparison?

9 A Do you want it outlined in color?

10 Q If you've got another color available, that
11 would be helpful. If not -- wait, I think I have a
12 highlighter. This will settle it. We have a blue
13 magic marker.

14 A The original recreation area that was
15 designated on -- is designated on the approved plan.
16 It's this whole area here adjacent to Bay Head Road and
17 south of Woods Landing Drive, located here, now
18 outlined in blue.

19 Q Now, you indicated that there was some -- I
20 forget the word you used, perhaps caution or concern,
21 about planning units in the forward area as opposed to

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1 the waterfront area of this. Are you familiar with the
2 County Code, Section 11-112, which states that, "A
3 deviation from an approved site plan for special
4 exceptions will require rescinding of that special
5 exception"?

6 A That would be the reason why you couldn't
7 chip the density, but, in looking at alternatives, the
8 --

9 Q Do you think that this constitutes a change
10 in the original approved site plan in Sections One and
11 Two?

12 A It may or may have, but that is a suggested
13 alternative of how the ship is --

14 Q Doesn't that mean, then, that this special
15 exception no longer exists?

16 A It could be revised.

17 Q And --

18 A This Board has done that many times, I'm
19 sure.

20 Q Don't you believe that that has to go through
21 the Hearing Officer?

1 A It may have to, sure.

2 Q Do you think that the appropriate way to
3 handle this is to go back to square one, with a whole
4 new special exception that applies to both Section One
5 and Section Two at this juncture? Do you believe
6 that's the appropriate way?

7 A Now?

8 Q Yes.

9 A I believe it was the appropriate way to start
10 out with. If you look at alternatives, then -- I
11 haven't been able to determine if anybody has looked at
12 that alternative.

13 Q You said that you didn't believe you had
14 license to discuss this alternative with Planning and
15 Zoning?

16 A No.

17 Q Did you make that attempt? Did you approach
18 Planning and Zoning with any requests to discuss it?

19 A No.

20 Q Has Planning and Zoning ever denied you the
21 opportunity to discuss plans before?

1 A No. It's a personal point of view that I
2 shouldn't be planning somebody else's property and
3 taking plans around to the county agencies, at least
4 without that person's knowledge.

5 Q All right, just as a correction, I believe
6 you indicated that the storm water from the current
7 Section One goes into the bay. I assume you meant the
8 Little Magothy.

9 A Yes, the Little Magothy, I'm sorry.

10 MS. BAER: I have no further questions.

11 Thank you.

12 CHAIRPERSON HALE: Members of the Board. Mr.
13 Edmondston.

14 EXAMINATION BY MEMBERS OF THE BOARD

15 BY MR. EDMONSTON:

16 Q Mr. Lanham, correct me if I'm wrong, but it
17 is my understanding that the plan that is before us now
18 is different than the plan that was originally
19 submitted and had been on hold because of the sewer
20 moratorium. Has any of your investigation determined
21 this to be true?

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1 A The plan that is before you has been changed.
2 The units have been moved inward some distance to
3 accommodate a 50- to 60-foot buffer, which was one of
4 the items that Planning and Zoning wanted to see this
5 insofar as possible.

6 Q So there has been a change in the original
7 site plan?

8 A There has been a slight change, yes. It's
9 the overall plan.

10 MR. EDMONSTON: Okay, fine, thank you.

11 CHAIRPERSON HALE: Mr. Lamartina.

12 BY MR. LAMARTINA:

13 Q Mr. Lanham, is it your testimony, then, that
14 the proposal you're suggesting it could have been done
15 to meet the requirements insofar as possible, would
16 that be acceptable to your client?

17 A It just goes with the product.

18 Q Would that proposal be acceptable to your
19 client?

20 A Woods Landing?

21 Q Your design to your clients?

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1 A -- the design, yes.

2 Q No. To -- the client that you were
3 representing, would that proposal that you just
4 submitted and suggested, would that satisfy your
5 clients?

6 A Yes, it would. They were happy with it, but
7 they were more happy with those units being put out
8 front than in the back.

9 Q Even though they can't meet the 30 percent
10 tree-clearing requirement and they can't meet the
11 impervious surface?

12 MR. MURRAY: Mr. Lanham has not --

13 CHAIRPERSON HALE: I'm sorry. He has to
14 answer the questions if he's able.

15 BY MR. LAMARTINA:

16 Q In other words, your plan still falls short
17 in the critical area requirement?

18 A Yes, it does.

19 Q But yet you're telling me that your clients
20 that you represent, that you do this plan for, would be
21 satisfied with it?

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1 A Yes, sir.

2 MR. LAMARTINA: Thank you.

3 CHAIRPERSON HALE: Mr. Deuringer.

4 BY MR. DEURINGER:

5 Q Mr. Lanham, the builder for Woods Landing
6 number two, is that the same builder as the number one?

7 A It's my understanding it is not.

8 Q It's not? Are you familiar with the builder
9 who is planning to do number two?

10 A No, I'm not.

11 Q In order -- pardon?

12 A Nor is he a client of the firm.

13 Q Okay. In order to bring this development
14 within the proper guidelines, your plan brought it down
15 from the trees, from 60 to 48 percent; you established
16 a 100-foot buffer; and you reduced the impervious
17 surface from 28 percent to 21 percent. Am I correct on
18 this?

19 A Yes.

20 Q In order to bring it into stricter
21 conformance, it would require a reduction in the

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1 density; would that be correct?

2 A No. No reduction in density. It stays the
3 same.

4 Q What would be necessary to bring the, like,
5 the tree clearing within the 30 percent and the
6 impervious surface within the 15 percent? What would
7 be necessary?

8 A The economy of the proposed reconfigurations,
9 if you will, is use of existing and construction; that
10 is to say, that there is an existing road there at the
11 corner of Bay Head Road, which is Woods Landing Drive.
12 There is also a water and sewer line and some
13 opportunity for storm water management. So the
14 reconfiguration simply represents the same density, but
15 a proposed reduction in the amount of whatever is
16 necessary and the imperviousness serves the same number
17 of units.

18 MR. DEURINGER: All right. Thank you.

19 CHAIRPERSON HALE: Mr. Schafer.

20 BY MR. SCHAFFER:

21 Q Mr. Lanham, to follow up on Mr. Lamartina's

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1 line of questioning a little bit, when you were asked
2 if your client would accept this proposal, you said,
3 "Yes, he would." But is it Woods Landing Community
4 Association as a whole, or was it just the president
5 that you're referring to?

6 A I've got the -- of the community.

7 Q Okay. So it's -- actually, it hasn't been
8 presented to the entire Community Association?

9 A No.

10 MR. SCHAFER: Okay, thank you.

11 BY CHAIRPERSON HALE:

12 Q If I understood your answer to Mr.
13 Deuringer's question, you said there would be no
14 reduction in density required to meet the current
15 critical area law?

16 A That's incorrect.

17 Q All right. Would you tell me what -- I think
18 he asked if it would be necessary to reduce the density
19 to meet the current law, and I don't think that's what
20 you heard and answered. And that's what I'd like you
21 to clarify. I think he asked you if it would be

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1 necessary to reduce the density in order to meet the
2 critical area law condition?

3 A Reduce the density of this type of product?

4 Q Yes.

5 A It might be possible to change land use and
6 put a high rise in the middle with underground parking,
7 and, you know, achieve all those things, but I doubt if
8 that's really marketable, in my opinion.

9 CHAIRPERSON HALE: Mr. Lamartina.

10 BY MR. LAMARTINA:

11 Q Could you identify who your client is.

12 A The Woods Landing Association.

13 Q You represent the Association?

14 A Yes.

15 MR. LAMARTINA: Thank you.

16 CHAIRPERSON HALE: Mr. Deuringer.

17 BY MR. DEURINGER:

18 Q Okay. I just want to be sure I understand
19 this. Under your proposal here, this is where we come
20 up with those new percentages that we just mentioned
21 before. Now, if we were to eliminate some of the units

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1 here, that would reduce the impervious service,
2 correct?

3 A That's correct.

4 Q Now, do you have any information as to how
5 many units would have to be removed in order to bring
6 it within the 15 percent, or 25 -- what is it?

7 CHAIRPERSON HALE: 15.

8 BY MR. LAMARTINA:

9 Q 15?

10 A Just the impervious surface?

11 Q Yes.

12 A Probably around 25 units.

13 Q About 25 units?

14 A Yes. Using that same product, which is a
15 single-family attached or townhouse with a garage,
16 which is within the envelope. In order words, you're
17 parking the car in the garage or amongst your
18 belongings, but you're also parking your car behind it,
19 so it's a very efficient way to do that type of
20 product. And the plans have been approved. They're
21 not bad. It's just that they don't come anywhere near

1 what the critical area criteria would be --

2 Q Okay. But if the approved plans were to be
3 scaled down in size, it could -- you could meet the
4 critical areas criteria, correct?

5 A Yes, but I believe, certainly, that you'd
6 lose -- for this product, you would lose density.

7 Q You lose density?

8 A Yes.

9 Q And, percentage-wise, how much density would
10 you be losing?

11 A Maybe around 15 percent.

12 Q So by reducing the density 15 percent, in
13 your opinion, it could be brought within the critical
14 areas?

15 A It could come close.

16 Q All right, thank you.

17 A Since we've moved the units up, assuming that
18 configuration were used at the beginning point, the
19 starting point. That's not a final plan. That's not
20 engineered.

21 Q Right.

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1 A And it needs a lot of work before it's a real
2 plan.

3 MR. DEURINGER: Thank you.

4 CHAIRPERSON HALE: Mr. Blumenthal.

5 MR. BLUMENTHAL: I have no further questions
6 at this time.

7 CHAIRPERSON HALE: Ms. Baer.

8 MS. BAER: I have no questions at this time.

9 CHAIRPERSON HALE: Mr. Murray.

10 MR. MURRAY: No further questions.

11 CHAIRPERSON HALE: You may be excused, but
12 you may be recalled.

13 THE WITNESS: Okay.

14 MR. MURRAY: Richard Kline.

15 CHAIRPERSON HALE: Raise your right hand,
16 please.

17 Whereupon,

18 RICHARD KLINE,
19 a witness, called for examination by counsel for the
20 Protestants, was duly sworn, and was examined and
21 testified as follows:

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1 CHAIRPERSON HALE: Would you sign the witness
2 list, please.

3 MR. MURRAY: I believe he signed the list --

4 CHAIRPERSON HALE: Please give us your name
5 and address for the record.

6 THE WITNESS: My name is Richard Kline. My
7 company is Community and Environmental Defense Services
8 at Post Office Box 206, Maryland Line, Maryland 21105.

9 CHAIRPERSON HALE: You may continue.

10 DIRECT EXAMINATION

11 BY MR. MURRAY:

12 Q Mr. Kline, what does your company do?

13 A We evaluate proposed development ventures to
14 identify any possible effects upon neighboring
15 properties or the environment.

16 Q How long have you been in this business?

17 A I've been running this company for four
18 years.

19 Q What did you do prior to that?

20 A I was with the Maryland Department of Natural
21 Resources for 18 years prior to that.

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1 Q What did you do for DNR?

2 A The first four years I was with the
3 department, I was in Fisheries Management, and I worked
4 for the old Department of Chesapeake Bay Affairs. The
5 second four years I was with the Resource
6 Administration, the Water Quality Services Section, and
7 the last ten years I was with the Maryland Tidewater
8 Administration.

9 Q And in those jobs, did you have to deal with
10 issues regarding water quality?

11 A Yes. When I started with the Fisheries
12 Administration as a technician in the early '70s, I was
13 involved in a number of different fishery
14 investigations. Through those investigations, I
15 learned the techniques that were used in surveying and
16 assessing the quality of aquatic systems, qualities
17 which effect upon fishery resources.

18 Then when I moved into the Water Resource
19 Administration, where my duties involved the chemical,
20 physical and biological assessment of aquatic systems,
21 I learned additional techniques. I became sufficiently

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1 proficient with those techniques that I then took over
2 responsibility for the design of surveys, including the
3 sampling station selection, selection of parameters
4 that would be analyzed, overseeing the quality control,
5 overseeing the collection of the data itself,
6 interpretation of the results, and then report the
7 interpretation.

8 As a matter of fact, the last year I was with
9 the Water Resources Administration, in 1979, I
10 published this paper, which appeared in one of the
11 leading scientific journals in the country at that time
12 on the aquatic systems. This paper serves as the full
13 basis for the 15 percent impervious criteria that
14 appears in the Maryland critical areas law. It also
15 appears in a number of local and state ordinances
16 around the country.

17 The last ten years I was with the department,
18 my primary responsibility was developing techniques for
19 assessing the impact of land use changes and other
20 human activities upon aquatic systems, and developing
21 measures for mitigating those impacts.

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1 Q Have you had occasion to write any articles
2 other than the ones you've mentioned?

3 A Yes. I've published more than two dozen
4 papers. For instance, I published a literature review
5 for the Department of Natural Resources on the effects
6 of urbanization landfill upon aquatic systems. I also
7 published a literature review for the department on the
8 effects of sediment pollution, soil erosion, and
9 sediment releases into aquatic systems. I prepared a
10 publication for the department entitled, "The
11 Restoration of Urban Streams," as well as guidance
12 documents for evaluating the quality of aquatic
13 systems.

14 Q In connection with your training at the DNR,
15 did you work with biologists, chemists, and engineers?

16 A Yes, I did. It was through those
17 professionals that I developed an in-depth
18 understanding of how aquatic systems work, methods that
19 are available for assessing impact upon aquatic
20 systems, and methods for preserving the quality
21 associated with streams, rivers, and tidal waters in

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1 the state.

2 While I was with the Department of Natural
3 Resources, I also designed and supervised the
4 construction of storm water management devices. In
5 fact, I was responsible for installing the first
6 infiltration devices in the existing developed area in
7 Maryland.

8 Q And do you continue to work with
9 professionals like chemists, biologists, and engineers
10 in your current business?

11 A Yes. We repeatedly subcontract with those
12 folks. Over the last four years, we've involved those
13 folks in more than 200 projects that we've evaluated
14 throughout the country, evaluations to determine what
15 the potential impact might be upon aquatic systems and
16 what measures might be available to reduce the impact
17 sufficiently to preserve aquatic resources while
18 allowing beneficial projects to proceed.

19 Q Do you spend any time reading scientific
20 literature in the area of water quality?

21 A Yes. As a matter of fact, I just submitted a

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1 paper for publication on the effects of boating
2 facilities upon aquatic systems, and that's pretty much
3 a literature review.

4 Q Do you regularly read scientific journals in
5 this area?

6 A Yes, I do.

7 Q Have you had occasion to testify before any
8 administrative boards before in the area of water
9 quality?

10 A Yes, I have, quite a few.

11 Q Including this one?

12 A Yes, on the issue of Back Bay Beach.

13 Q I request to qualify Mr. Kline as an expert
14 in the area of water quality and storm water
15 management.

16 MS. BAER: May I have the opportunity for
17 some questions, please.

18 CHAIRPERSON HALE: Yes. I believe -- have
19 you been accepted before this Board previously as an
20 expert in this area?

21 THE WITNESS: Yes, on Back Bay Beach.

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1 CHAIRPERSON HALE: On Back Bay Beach.

2 BY MS. BAER:

3 Q Mr. Kline, are you a chemist?

4 A No, I'm not.

5 Q Are you a biologist?

6 A I do not have a degree in biology. I do not
7 have any degree.

8 Q What is the level of your formal education?

9 A One year in college.

10 Q Are you a registered engineer?

11 A No, I'm not.

12 Q Are you a registered land surveyor?

13 A No, I'm not.

14 Q I would object. I don't believe that the
15 representative expertise has been shown.

16 THE WITNESS: I have nothing further to add
17 -- the objection.

18 CHAIRPERSON HALE: We have accepted this
19 witness in the past, and we do not limit ourselves to
20 educational credentials. We'll allow him to come in as
21 an expert on water quality.

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1 BY MR. MURRAY:

2 Q Mr. Kline, have you had occasion to
3 familiarize yourself with the proposed building plans
4 for Woods Landing Two?

5 A Yes. I reviewed both the storm water
6 management and the erosion sediment control plans for
7 the project, as well as a number of documents
8 pertaining to the project. I attribute all the files
9 that were available in the Office of Development Review
10 in Anne Arundel County.

11 Q Are you familiar with the site as such?

12 A Yes. I walked the site. I also studied
13 Little Magothy River adjacent to the site.

14 Q Have you made an analysis of the water
15 quality impacts of this proposed development?

16 A Yes, I have.

17 Q Would you tell the Board what you've
18 concluded.

19 A Well, the situation is that the Little
20 Magothy River presently receives about two times the
21 nutrient loading, which is deemed acceptable for a

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1 waterway of this type. Those nutrients mostly come
2 from the existing developed areas as well as settling
3 out of the atmosphere over the surface of the Little
4 Magothy River.

5 The excessive nutrient loading is exemplified
6 in the Little Magothy River in the form of excessive
7 algae growth, which is reflected by the reduced clarity
8 of the water, and the effect of that is to severely
9 restrict the growth of submerged aquatic vegetation and
10 also lead to dissolved oxygen deficiencies and a number
11 of other problems.

12 Presently, submerged aquatic vegetation does
13 not occur in the Little Magothy River system. That's
14 based upon a sample of the sediments that I collected,
15 which was then submitted to Johns Hopkins University
16 for analysis for submerged aquatic vegetation seeds,
17 and that analysis showed that there was not a
18 sufficient number of seeds to indicate that submerged
19 aquatic grasses presently occur within the system.

20 Also, the U.S. Fish and Wildlife Services
21 atlases of submerged aquatic vegetation distribution in

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1 the Chesapeake Bay system does not show any beds within
2 the Little Magothy River.

3 I believe that the absence of submerged
4 aquatic vegetation, which is considered one of the
5 primary indicators of the health of an estuarine system
6 is due to the excessive algae growth, lack of clarity
7 in the water, which prevents light from reaching those
8 grasses, in that it's in turn due to the high levels of
9 nutrient loading to the Little Magothy River.

10 Q And you've indicated your assessment of the
11 Little Magothy in the present condition. What would be
12 the impact on the Little Magothy if this development
13 occurs as proposed?

14 A Well, first of all, the 25 acres of woodland
15 that exist on the site, each anchor of that woodland
16 contributes about 300,000 gallons of relatively high
17 quality inflow into the Little Magothy River every
18 year. It's a total of about 7-1/2 million gallons of
19 relatively clean water, very clean water, that enters
20 that system. That comes from the ten to 15 inches of
21 rain that infiltrates the soils on the site each year,

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1 so -- and travels the groundwater. Then that
2 groundwater flows into the Little Magothy River
3 system.

4 That 7-1/2 million gallons of high quality
5 inflow is extremely important to buffering the effects
6 of the other source -- of the sources of pollution that
7 exist within the system.

8 The proposed development venture would
9 increase the amount of nutrients released to the Little
10 Magothy River from the 31-acre site by fourfold.
11 That's even with the storm water control measures that
12 have been proposed for use on the site. If the site
13 water fully complies with all the requirements of those
14 critical areas law, including the 15 percent
15 imperviousness limit, which my study prompted, it would
16 cut the nutrient loading from the site, from Woods
17 Landing Section Two, in half.

18 There's also a problem with toxic materials
19 that come from rooftops, parking lots, streets, that
20 wash into the system, copper being one of those toxic
21 substances associated with storm water runoff from

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1 developed areas. A portion of the storm water will
2 discharge directly to the tidal wetlands located
3 adjacent to the site. There are several studies which
4 have shown that the plants that grow in tidal wetlands
5 are susceptible to the toxic effects of copper at the
6 levels that you see in developed areas.

7 As to sites presently proposed, it would
8 cause a violation of the State of Maryland's copper
9 standard, three parts per billion, over about 2-1/2
10 acres of the Little Magothy River. Again, if the site
11 fully complies with the critical areas criteria, it
12 would cut that impact in half.

13 Q Okay. You just spoke about the pollutants
14 generally. What about soil erosion? Is that a factor
15 in water quality as well?

16 A Yes. The soils that are located on the site
17 have an erodability factor of .37. The Anne Arundel
18 County critical areas program defines a highly erodible
19 soil as one that has an erodability factor greater than
20 .35. So the soil that occurs throughout the site would
21 be considered highly erodible. Unfortunately, the

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1 control measures that have been proposed for use on the
2 site would only keep about half the sediment on the
3 site, half the eroded soil on the site.

4 The literature review I did for the
5 Department of Natural Resources showed that until you
6 cut the soil loss from a construction site by at least
7 90 percent, a significant impact of aquatic resources
8 still occur. If site disturbance were reduced from
9 that, which is presently proposed, such as through the
10 20 percent limitation that exists in critical areas, --
11 and forest removable, if forest removable were limited
12 to a maximum of 20 percent, it would greatly reduce the
13 soil loss. In fact, I believe that it would cut it
14 from the 500 or so times per year that would be lost
15 under the current plan down to about 125 times per
16 year.

17 Q Now, when that soil or those soil particles
18 get into the Little Magothy, is that good for the water
19 quality or not?

20 A A little bit of sediment is good. More than
21 a little bit of sediment can be quite disastrous for a

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1 system, particularly like the Little Magothy's. It is
2 thought that suspended sediment, next to nutrients, is
3 the secondmost important factor limiting submerged
4 aquatic grass to grow throughout the bay.

5 Also, striped bass and a number of the other
6 commercially important fish in the Chesapeake Bay
7 system, their egg and larval states are quite sensitive
8 to suspended sediment in the water column. In fact,
9 the most sensitive fish in the bay system was the
10 American shad. I say "was" because the American shad
11 is pretty much nonexistent within the Chesapeake Bay
12 system these days.

13 Q Did you make a comparison in an attempt to
14 make an analytical comparison of the relative
15 difference between the project as proposed and the
16 project as it complied with the critical area criteria?

17 A Yes. For instance, the project as proposed
18 would release about 2-1/2 pounds of copper to the
19 Little Magothy system every year. If it fully complied
20 with the critical areas criteria, that would be cut by
21 about four -- to about 7/10 of one pound per year. It

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1 may not sound like an awful lot, but when you have
2 material that can be toxic to aquatic creatures at the
3 level of 20 parts per billion, it doesn't take much to
4 call this one a pretty substantial impact.

5 Q Do you have any other materials or comments
6 on your analysis that we may have overlooked?

7 A I do have a report of my findings.

8 (Whereupon, there was a discussion off
9 the record.)

10 CHAIRPERSON HALE: The Board will take a
11 short break and come back to this.

12 CHAIRPERSON HALE: I would just tell you we
13 are looking for dates for the continuation of this
14 hearing when everyone can be present. It is not easy.
15 But if we do not announce the date tonight, we must
16 readvertise, and that becomes very expensive and time-
17 consuming.

18 (Whereupon, there was a brief recess.)

19 We'll go back on the record. We'll continue
20 with Mr. Kline.

21 MS. BAER: I believe at the junction that we

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1 left off, there was a document that was proposed for
2 introduction. Okay; my mistake.

3 MR. MURRAY: No, that's correct.

4 MR. DEURINGER: It wasn't introduced yet.

5 VOICE: That was proposed.

6 MR. DEURINGER: Proposed.

7 CHAIRPERSON HALE: Yes. You are looking at a
8 proposed Exhibit No. 8, which is a report of Mr.
9 Kline's findings.

10 MR. BLUMENTHAL: Madam Chairman, for the
11 purposes of this record, I would object to the
12 introduction of this exhibit, due to some of the
13 contents of it. However, it has been my observations
14 and experience with members of this Board, that this
15 Board will probably, due to the lateness of the hour,
16 and the voluminousness of the exhibit, accept it and
17 subscribe to it the appropriate probative value as the
18 Board deems appropriate, but I want the record to
19 reflect my objection.

20 CHAIRPERSON HALE: Thank you. Ms. Baer.

21 MS. BAER: I will join in that objection.

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1 CHAIRPERSON HALE: And the Board will accept
2 this for its probative value. Where are we? And
3 noting the objections.

4 (Whereupon, the document was marked for
5 identification Protestants' Exhibit No. 8 and received
6 in evidence.)

7 CHAIRPERSON HALE: You may continue.

8 Mr. Blumenthal.

9 MR. BLUMENTHAL: I should like to defer to
10 Ms. Baer -- another first.

11 (Laughter.)

12 CROSS-EXAMINATION

13 BY MS. BAER:

14 Q Mr. Kline, your prepared outline and your
15 testimony presupposes that this project is required to
16 comply with the Chesapeake Bay critical area
17 requirements, does it not?

18 A What I did was compare the project as
19 proposed with the effects of the project if it fully
20 complied with the critical areas commission criteria.

21 Q Did you conclude that it was required to

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1 comply with that?

2 A No.

3 Q To the best of your knowledge, are the
4 designs within the plan in compliance with the Anne
5 Arundel County Code?

6 A That I'm not qualified to testify on.

7 Q As a part of your analysis, did you determine
8 a relative impact to the bay pollutants -- the relative
9 impact of pollution to the river from the bay and from
10 the land use?

11 A You mean from all the existing land uses
12 draining to the Little Magothy River?

13 Q Right. Did you -- try again on the question.
14 Did you look at the impact on the Magothy and assess
15 the relative source of pollutants between the land uses
16 and the Chesapeake Bay as a pollutant?

17 A No. Not between the Chesapeake Bay and the
18 land uses, but I did look at all the land uses within
19 the Little Magothy watershed as well as atmospheric
20 deposition.

21 Q Okay. Are you aware of a study by Anne

1 Arundel County that shows that, for the lower half of
2 the Magothy River, the greatest environmental impact is
3 from the bay?

4 A No. It wouldn't surprise me. That wouldn't
5 surprise me.

6 Q And would you agree that this location would
7 be considered in the lower half of the Magothy?

8 A Yes, it is in the lower half of the Magothy.

9 Q Did you determine the specific impact of
10 Section One on the Magothy River?

11 A That was lumped into all the other existing
12 land uses on the Little Magothy River watershed.

13 Q Would you have an estimate as to what
14 proportion the impact of Section One is as part of the
15 lump sum analysis that you did?

16 A No. If you could break out what percentage
17 of the total impervious area was associated with
18 Section One versus the entire watershed, you might be
19 able to make some estimates on that, but I don't have
20 those figures in my figure text.

21 Q In your report, on page four, you discuss

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1 soil erosion and sediment impact, and you indicate that
2 Anne Arundel County defines "a highly erodible soil as
3 one which exhibits an erodability factor greater than
4 0.35."

5 A Yes.

6 Q Is it not true that that's only half the
7 definition; that the other half is that the property
8 has to be in a slope of five percent or greater?

9 A When I read that portion of the ordinance, I
10 noted that there was qualified language in there
11 according -- that included steep slopes, but it was my
12 impression, after reading it two or three times, that
13 if the soil had an erodability factor greater than .35,
14 it was considered a highly erodible soil.

15 Q But you would acknowledge that there is every
16 -- something in there having to do with five percent
17 slopes?

18 A I would agree that the steeper the slope, the
19 greater the erosion potential.

20 Q And would you say that, by and large, this
21 property has or does not have steep slopes?

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1 A The area that's proposed for disturbing that
2 is not steep slopes.

3 Q Now, you were talking about a copper loading
4 and sediment loading. The figures that you gave, are
5 those internal figures, are they figures for the
6 construction phase, are they figures for the first two
7 years of use? Can you define what it is and when it is
8 you are talking about?

9 Q The copper would come from the
10 postconstruction phase; when the site would be
11 completed; when the townhouse units would be occupied;
12 when the cars would be traveling within the community,
13 releasing copper, both from the exhaust and from engine
14 wear; as well as when the impervious materials would be
15 there, ready to catch the copper sediment from the
16 atmosphere. The sediment would come primarily during
17 the construction phase.

18 Actually, the existing developed areas
19 release too little sediment. Streams in drain
20 developed areas, in densely developed areas, receive
21 too little sediment.

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1 Q Do I understand your report, on page two, to
2 say that the infiltration measures that are proposed
3 for this site will reduce copper loading by 70 percent?

4 A That's correct.

5 Q Would you say that that's a substantial
6 improvement over no sediment control at all?

7 A The sediment control wouldn't have any effect
8 on the copper loading. The sediment control would work
9 during the construction phase.

10 Q Would the storm water management -- would you
11 say that's a significant impact over most storm water
12 management?

13 A Over no control at all. Yes, that's a
14 substantial improvement.

15 Q Would it be fair to say that it's a 70
16 percent improvement?

17 A If you compare the existing -- the site as it
18 currently exists and the very low copper loadings from
19 that site with very high loadings that you would get if
20 there were no control at all, and then looked at the
21 loadings that you would get with the control measures

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1 that have been proposed for the site, it's a modest
2 reduction, but it's not a substantial reduction.

3 Q But your report says that the copper loading
4 could be reduced by 70 percent.

5 A Yes.

6 Q And, in fact, the infiltration measures would
7 reduce nutrient loading by 50 percent.

8 A For the portion of the site that would drain
9 to infiltration devices.

10 Q Now, are those devices also working in
11 Section One?

12 A No, I don't believe so.

13 Q So would it be fair to say that Section One
14 does not have the benefit of the reductions as a result
15 of the lack of this kind of storm water management?

16 A I believe that there is no control measures
17 for the -- associated with storm water from Section
18 One. So Section One has no control for storm water
19 pollutants.

20 Q Now, would it be a fair thing to surmise if
21 Section One is, in fact, one of the contributors of the

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1 current situation of the Little Magothy?

2 A Yes. And it's a situation that, hopefully,
3 will not get any worse. Otherwise, the problems that
4 we're seeing in the Little Magothy could increase
5 considerably. We're seeing sort of these midlevel
6 effects of excessive nutrient loading right now. We
7 are not seeing the more severe effects such as those
8 seen in Rock Creek and northern Anne Arundel County,
9 where you have massive fish kills.

10 Q It's not a question pending right now.

11 Did you do any studies to determine the
12 source of the -- that are currently in the Little
13 Magothy?

14 A What I used was standard techniques to
15 estimate what the contributions would be from the
16 various different sources.

17 Q But that did not include the Chesapeake Bay?

18 A No.

19 Q In your chart, on page two, I'm kind of
20 curious. You have different sources of information
21 from which you get these estimates. Why didn't you use

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1 just one source along with the estimates, or is this a
2 worst-case scenario?

3 A Oh, no. As a matter of fact, it's a typical
4 scenario. The reference for estimating pollutant
5 loadings, storm water loadings, from developed areas is
6 a publication produced by the Metropolitan Washington
7 Council of Governments Control entitled Controlling
8 Urban Runoff." It's commonly referred to as the "Green
9 Book."

10 While the Green Book is very good at helping
11 you to estimate storm water loadings from developed
12 land, it's not very good at undeveloped. The best
13 source of information for pollutant loadings from
14 undeveloped lands is the extensive work done by the
15 Smithsonian Institution on the Rhode River here in Anne
16 Arundel County, just a few miles from the site.

17 And the best source of information on the
18 release of pollutants from the atmosphere is a study
19 that was also done by the Metropolitan Washington
20 Council of Government for nutrient loadings to the
21 Potomac River.

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1 MS. BAER: Board's indulgence for just a
2 second.

3 BY MS. BAER:

4 Q In discussions of these impacts, you --
5 again, are you talking about the land --

6 A No. It also included contributions from the
7 atmosphere.

8 Q Atmosphere, okay. But you're not discussing
9 -- you've not discussed any contribution from the
10 Chesapeake Bay, and earlier you testified that you
11 would not be surprised that an Anne Arundel County
12 study showed that the lower half of the river, the
13 greatest impact is from the bay.

14 A That may be true for the lower half of the
15 Little Magothy River, but you got to keep in mind that
16 for the lower -- did you say the lower half of the
17 Magothy River or the Little Magothy?

18 Q Lower half of the Little Magothy.

19 A The Little Magothy. Yes, I'm sure that
20 inflow is a significant source of pollution for the
21 Little Magothy.

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1 Q If no other construction were to happen at
2 all on this site, and the influence -- the bay is the
3 predominant influence, then you really are not going to
4 have a net -- better quality in this river, are you, as
5 long as the bay continues to be the dominant influence?

6 A Well, you see, the trouble is that each year,
7 6,000 acres of land are developed throughout the
8 Chesapeake Bay watershed. And if you look at each acre
9 of land that's being developed in the bay watershed
10 each year, and you say, "Gee, the contribution of this
11 acre of land is not that significant," then, what's to
12 prevent the quality of the Chesapeake Bay from
13 declining further, what's to prevent the nutrient
14 loadings in the bay from increasing, and, therefore,
15 increase the amount of nutrients transported in the
16 Little Magothy River? It's just that type of
17 irracionale that's allowed the bay to degrade to its
18 current state.

19 Q Isn't it, though --

20 A What you need to do is to take every
21 opportunity that's available to us to keep nutrients

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1 and other storm water pollutants on the land. That
2 opportunity has -- there are additional opportunities
3 available on Woods Landing Section Two that have not
4 been taken advantage of.

5 Q But isn't the line of opportunity the one
6 that's drawn by the law that says, "where you apply the
7 standards"?

8 A Yes.

9 MS. BAER: I have no other questions.

10 CHAIRPERSON HALE: Members of the Board.

11 Mr. Deuringer.

12 EXAMINATION BY MEMBERS OF THE BOARD

13 BY MR. DEURINGER:

14 Q Mr. Kline, there was a lot of testimony about
15 -- a lot of questions about the impact that the
16 Chesapeake Bay has on the Little Magothy River. The
17 inlet from the Chesapeake Bay into the Little Magothy
18 River is a very narrow one, and I think it was
19 testified to before, if I recall correctly, like 50
20 feet wide.

21 So, unlike some of the other rivers, like

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1 Whitehall Creek, for example, which have wide openings
2 and so on, wouldn't that narrow inlet -- wouldn't that
3 significantly, or to what degree would you think limit
4 the amount of pollutants that would get into that?

5 A Well, it does restrict the amount of
6 pollutants that get into the Little Magothy.
7 Certainly, if the waterway were completely open, like,
8 say, the coves that are located around Gibson Island,
9 the amount of tidal exchange that could occur, the
10 amount of Chesapeake Bay water that could flood into
11 the Little Magothy would be much greater.

12 Q Are you familiar with the report that Ms.
13 Baer was referring to?

14 A Not that particular report, but I've seen a
15 number of studies that have talked about the
16 contribution of inflow to nutrient loadings. In fact,
17 I've just prepared a restoration plan for Middle River
18 in Baltimore County, and we suspect that inflow from
19 Chesapeake Bay may account for a fourth to a third of
20 the nutrient inputs for that river system.

21 I know that the study that was done by Dames

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1 and Moore on Rock Creek found that about half of the
2 nutrient loadings, I believe, was there in Rock Creek
3 by way of inflow from the Patapsco.

4 But, again, keep in mind that those nutrient
5 loadings don't just sort of appear in the Chesapeake
6 Bay. They're introduced to the Chesapeake Bay system,
7 and a substantial portion of those come from the storm
8 water runoff from developed lands, the ten percent of
9 the bay watershed that's developed at this point.

10 MR. DEURINGER: Okay. Thank you, sir.

11 CHAIRPERSON HALE: Mr. Edmonston.

12 BY MR. EDMONSTON:

13 Q Are you aware of what the flushing potential
14 of the Little Magothy is? Is it a well-flushed area?

15 A It's severely poorly flushed. You could --

16 Q What gets in there has a tendency to retain
17 for longer than a normal period?

18 A Yes. It's a fantastic sediment trap.

19 Q Okay.

20 A Which makes it an extremely sensitive area.

21 Q There was some questioning on this

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1 erodability factor. Is that erodability factor
2 designed to take into consideration the slopes of the
3 soil that the water would pass over; for instance,
4 using the same factor and increase or decrease the
5 amount of erosion based on the slope?

6 A No. The erodability factor comes from
7 something developed by the Department of Agriculture
8 called the universal soil loss equation, and the
9 erodability factor is one of six factors that go into
10 predicting the erosion rate on a piece of land.
11 There's a rainfall factor; the erodability factor; a
12 land slope factor, the degree of slope; a slope length
13 factor; a cover factor, that is, do you have grass on
14 it or is it bare soil; and then a practice factor, or
15 what control measures do you apply to that.

16 Q Okay. So the fact that the steep slopes are
17 not being developed, any additional runoff that would
18 come from the developed portion of the property would
19 have an effect on the erosion that took place on the
20 steep slopes?

21 A Yeah. The significance of the erodability --

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1 of that high erodability factor on the site is that,
2 presently, with the forest that covers about 80 percent
3 of the site, the erosion rate is about 2-1/2 times per
4 year. That's for the entire site. During the
5 construction phase, the erosion rate will rise to as
6 much as 500 and I think 14 times per year.

7 If the site disturbance were limited to the
8 20 percent maximum forest removal containing critical
9 areas, you would cut that back from 515 down to about
10 114, and given the poorly flushed nature of the Little
11 Magothy, the fact that it's so very sensitive to
12 sediment, the fact that it's such a very effective
13 sediment trap, it's extremely important to take
14 advantage of every opportunity to minimize erosion on
15 the site. Even if all that conventional control
16 measures were fully applied to the site, it still may
17 cut the soil upgrade in half.

18 Q One final question, which may generate
19 another one. When you consider nutrients, does that
20 only include things that are man-made or that exist or
21 get introduced to the system because of things man

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1 does, or are there nutrients naturally occurring that
2 are detrimental to the operation.

3 A Oh, yes. Now, if there weren't nutrients
4 naturally occurring, the earth would be a desert.

5 Q Okay. When you say nutrient loading, you're
6 considering both the natural and the additional
7 nutrient loading that would take place because of this
8 development?

9 A Yeah. Let me give you an example.

10 Rural generally releases about one or two
11 pounds of nitrogen per acre per year. A parking lot
12 releases about 27 pounds of nitrogen a year. So,
13 nitrogen, phosphorous, the other nutrients, are
14 naturally occurring. But human activities greatly
15 increase the availability of nutrients to organisms
16 like algae, which have prevented submersed aquatic
17 vegetation from flourishing in the Little Magothy.

18 Q One of the reasons I asked that question was
19 because I -- I had a personal interest. I'm a
20 waterfront owner myself in a poorly flushed creek, and
21 I know that all the oak trees in our neighborhood drop

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1 their leaves, and they get to the bottom of this creek,
2 and I think you could use that stuff for bunker sea.

3 A Yes.

4 Q Is that what you consider a negative
5 effective nutrient, or is that --

6 A That is a naturally occurring nutrient. That
7 plays a role in problems you see in the Little Magothy,
8 but it only plays a role because the amount of
9 nutrients getting into the Little Magothy so greatly
10 exceeds the natural rate.

11 Q Okay. Thank you.

12 CHAIRPERSON HALE: Mr. Boring.

13 BY MR. BORING:

14 Q Yes, Mr. Kline. The copper -- the 2-1/2
15 pounds of copper, I'd like to know -- exactly where is
16 that coming from?

17 A Well, it comes from a variety of sources. It
18 comes -- there's a little bit coming out of the exhaust
19 from my car, your car. There's also additional copper
20 coming from the copper parts within the engine itself,
21 engine where -- it's been a long while since I took one

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1 apart, but alternators used to have copper brushes in
2 them. That's a source of it.

3 Also, copper is released from fossil fuel
4 combustion, such as from power plants. Copper also
5 comes from the copper flash in the downspouts you see
6 in more expensive houses. There are also a number of
7 sources in a marine environment for copper other than
8 storm water runoff, such as the copper used to protect
9 boat hauls from -- organisms.

10 Q Okay. On this particular site, the 2-1/2
11 pounds of copper certainly was not -- I guess the
12 traffic would have quite a bit to do with that then,
13 right? It's the amount of -- if the site was
14 developed, how many automobiles are in and out of
15 there, is that --

16 A Yes. There are a couple of studies that have
17 been done, one in Blacksburg, Virginia, where they
18 found that the more cars that are traveling on a
19 highway, the more cars that are traveling on a road,
20 the higher the metal levels are in sediments of the
21 streams that drain those roadways. So the more units

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1 you have, the more car track that you have, the more
2 toxics are being generated.

3 MR. BORING: Okay, thank you.

4 CHAIRPERSON HALE: Mr. Schafer.

5 BY MR. SCHAFFER:

6 Q Yes, Mr. Kline. On Protestants' Exhibit No.
7 7, which is the cover page, under the critical area
8 requirements, as woodland clearing, it has a 30 percent
9 maximum, and you keep referring to a 20 percent. Can
10 you explain to me -- I mean, where we differ between
11 the 20 and 30 percent. Which one is right?

12 A I thought it was 20 percent. Maybe I should
13 defer to a lawyer.

14 CHAIRPERSON HALE: Mr. Murray.

15 MR. MURRAY: Yes, ma'am.

16 CHAIRPERSON HALE: Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. MURRAY:

19 Q Mr. Kline, does the entire site as proposed
20 for development drain to similar management structures?

21 A It drains to two different types of storm

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1 water management structures, quality control structures
2 for storm water.

3 Q But the entire site does every bit of it?

4 A No. Seventy-five of the townhouses,
5 according to the storm water plan, the right half of 75
6 of the townhouses bypass the storm water pollution
7 control measures, and they would drain directly into
8 the forest buffer, the diminished forest buffer.

9 Q Now, with respect to the nutrient loading,
10 pollutant loading, sediment loading issues that you
11 discussed here today, there are several factors which
12 contribute to those things either being more or less;
13 is that correct?

14 A Yes.

15 Q And they include the number of trees on the
16 site?

17 A Yes.

18 Q The more trees there are on the site, the
19 less of those things get in the water?

20 A In general, yes.

21 Q Impervious surface?

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1 A Yes.

2 Q The more impervious surface, the more of
3 those things get in the water?

4 A That's correct.

5 Q What about the buffer?

6 A That also plays a role. The buffer tends to
7 be -- would be most effective in keeping pollutants on
8 the site. If there are pollutants that are carried in
9 relatively small quantities of storm water runoff -- if
10 you got a great quantity of runoff, such as that from a
11 parking lot, flow into a strip of forest, a strip of
12 forest that separates, say, the Little Magothy from
13 that parking lot, because the large volume of runoff
14 that you would get from a parking lot, you don't get
15 much pollutant removal.

16 You would get far greater pollutant removal
17 if you had, say, the runoff from the rear half of a
18 rooftop, a relatively small volume of water flowing
19 into that forest buffer, spreading that into a sheet on
20 the surface of the forest floor, and then soaking
21 rapidly into the forest floor. As the storm water

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1 soaks into the forest floor, much of the pollution
2 would be removed.

3 In fact, you could remove not even 95 percent
4 of the pollution associated with runoff from a rooftop
5 if it all drained to a buffer. But if you started to
6 increase the volume of runoff much beyond that, which
7 you would get from a small area, like a half of a
8 rooftop, you would quickly overwhelm the buffer and get
9 very little pollutant removal.

10 Q I think I heard you, but I want to make sure
11 I heard your answer. Did you answer a question that
12 you were familiar with the study made reference to on
13 the Little Magothy River?

14 A Not that particular study.

15 MR. MURRAY: That's all the questions I have.

16 CHAIRPERSON HALE: Mr. Blumenthal.

17 CROSS-EXAMINATION

18 BY MR. BLUMENTHAL:

19 Q I'm unclear in a technical sense, and so I
20 ask this question of you.

21 Do storm water management practices and

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1 infiltration devices lend in the effort to restrict the
2 flow of nutrients and pollution or the loading thereof
3 into the waters?

4 A The seven infiltration trenches that are
5 proposed for Woods Landing Section Two would reduce the
6 loadings, but the two attenuation structures would
7 provide virtually no pollutant removal at all. Those
8 are the ones that drain about a third of the impervious
9 area.

10 Q And so that the balance of the two-thirds are
11 into infiltration devices?

12 A Yes.

13 Q Now, on your page two, and you're giving
14 loading -- storm water loads, developed land,
15 undeveloped land, atmospheric deposition, does that
16 assume a total absence of infiltration devices?

17 A For the existing development into the Little
18 Magothy River watershed, yes, I assume that if there
19 was any storm water control in the watershed, it would
20 be serving a relatively small portion -- insignificant
21 portion of the developed area.

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1 Q So, therefore, by your own words just spoken,
2 if two-thirds of the storm water is going to be
3 infiltrated, then these generalized or average figures
4 should be reduced by two-thirds?

5 A Which figures?

6 Q The loading -- the pollutant loading.

7 A I see the confusion. Table one is for the
8 entire Little Magothy River watershed. Table two is
9 just for Woods Landing Two.

10 Q All right. Well, directing your attention to
11 table two, does your table two assume any infiltration
12 devices on Section Two?

13 A Yeah.

14 Q Is that what we get after the infiltration?

15 A Yeah. When you look at the existing land
16 use, you see that for nitrogen and phosphorous, you get
17 51 pounds per year. For the proposed land use, which
18 takes into consideration the seven infiltration devices
19 plus the lack of removal for the two attenuation
20 devices, it jumps from 51 pounds per year up to, what's
21 that, 212 pounds per year.

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1 If the site fully complied with the critical
2 areas criteria, that is, if the percent impervious area
3 was limited to 15 percent instead of the 25 percent
4 proposed, and you confine that impervious area to those
5 soils on the site which are suitable for infiltration,
6 you would get more than a twofold reduction in the
7 nutrient loading to the Little Magothy River.

8 Q You've indicated that the soil erosion rate
9 on the 31-acre tract, which is Section Two, would
10 increase to 521 tons per year during the construction
11 phase.

12 A Yes.

13 Q And how is that calculated? Is that a per-
14 acre calculation?

15 A No. What I did was, I looked at the erosion
16 sediment control plans, the plans that showed the
17 limits of clearance, and assumed that all of those
18 acres, which I think was about 20, 25 acres, would be
19 clear. And the figure, 521-tons per year, that would
20 be for that entire --

21 Q The 25 acres?

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1 A For the entire disturbed area.

2 Q All right. That assumes, does it not, that
3 the entire 25 acres is going to be cleared at one time?

4 A The rate would be --

5 Q Does it or doesn't it? It's a simple
6 question. Does it assume that the 25 acres is cleared
7 in one fell swoop?

8 A Yes.

9 Q Therefore, is it axiomatic that if only half
10 the acreage is cleared at one time, you would have half
11 the pollutants set forth, and if ten percent is cleared
12 at one time, you would have ten percent pollutants,
13 which you state in your report?

14 A Yeah. That's why, if clearance were limited
15 to 20 percent of the forest, you would get one-fourth
16 the sediment releases.

17 Q My question was, if you take the 25 acres,
18 which is proposed to be developed in total, but limited
19 to sections, does that proportionately reduce this 521-
20 ton figure on your page four?

21 A If the section is exposed for one year, then

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1 -- and each one of those sections, as the developer
2 exposed for one year, you would end up with, in effect,
3 the same soil --

4 Q All right. Now, one of the first things you
5 said captured my attention. I believe you said, in
6 your testimony, that you were responsible for perhaps
7 the first infiltration device ever installed in the
8 State of Maryland.

9 A No. In an existing developed area.

10 Q All right. What developed area was that?

11 A Homeland, in Baltimore City.

12 Q All right. When was that installed?

13 A Oh, let's see.

14 Q Approximately. It doesn't matter. A year or
15 two, three, four?

16 A 1982, '83.

17 Q Is it still working?

18 A That I wouldn't know offhand.

19 Q Was it designed to work on a continuing
20 basis?

21 A Oh, yeah.

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1 Q From your experience, if properly maintained,
2 do infiltration devices work?

3 A If properly maintained, I believe that they
4 could work. Unfortunately, they haven't been in long
5 enough to find out how long a properly maintained
6 device will continue to function before events ever
7 come and then failure occurs.

8 I know that the infiltration devices that are
9 being installed, based upon a study that was done in
10 Montgomery and Prince George's County, are failing at a
11 fairly rapid rate.

12 MR. BLUMENTHAL: I have no further questions.

13 MS. BAER: I have several.

14 RECROSS-EXAMINATION

15 BY MS. BAER:

16 Q On page three of your report, you indicate
17 that there's a copper release from the two attenuation
18 trenches that caused violation of water quality
19 standard under the COMAR; is that correct?

20 A Yes.

21 CHAIRPERSON HALE: Excuse me. Can you move

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1 that mike over towards her, please.

2 BY MS. BAER:

3 Q Would your conclusion be different if you
4 were aware of the fact that the soil on that location
5 is clay, and, therefore, there will be no infiltration?

6 A No. It would be the same.

7 Q You don't think it matters what kind of soil
8 is there?

9 A No, no. I don't see how. You're still going
10 to see about 2-1/2 acres of Little Magothy exceeding
11 the state criteria for copper.

12 Q And is that in the construction phase, or is
13 that in the postconstruction phase?

14 A Postconstruction phase.

15 Q And what are your assumed contributors to
16 that copper nutrient?

17 A It would be the roughly 2-1/2 acres of
18 impervious area that would drain to those two
19 attenuation trenches, and there would be no removal of
20 the copper as the storm water runoff flows through
21 those attenuation trenches. It would then discharge

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1 into the Little Magothy River or at an -- near the
2 tidal marsh located on the Little Magothy River.

3 Q So your calculation of where the copper comes
4 from is only based on the amount of impervious surface?

5 A Well, it's based upon the results of a
6 nationwide urban runoff program, a study that looked at
7 the concentration of pollutants in 27 cities.

8 Q Would you say that this area constitutes a
9 city?

10 A I know that the copper concentration is what
11 you'll get from this site, given the proposed land use,
12 will be roughly the same as you would see in most
13 developed areas. There's no difference between this
14 site that would cause anyone to believe that the copper
15 loadings would be lesser or greater.

16 Q But your study only concerns itself with
17 cities?

18 A No.

19 Q Then I'm mistaken. You didn't say that it
20 concerns some 27 cities?

21 A The nationwide urban runoff program looked at

1 the storm water runoff in 27 cities. It also included
2 suburbs, and it also included rural areas outside those
3 cities. I know because I was part of the Jones Falls
4 nationwide urban runoff program, and we had sites
5 located in the cow pasture, which I remember quite
6 fondly, and sites located out in the suburban areas of
7 Baltimore County.

8 Q And wouldn't you say that the situation with
9 cow pastures might have a lot to do with the amount of
10 artificial or chemical type fertilizers that are used
11 in the ground, and isn't that a major source of runoff
12 in the rural areas?

13 A I don't think they fertilize cow pastures. I
14 think the cattle sort of take care of that.

15 (Laughter.)

16 CHAIRPERSON HALE: It's getting late.

17 BY MS. BAER:

18 Q Did the Jones Falls study evaluate the effect
19 of runoff from rooftops?

20 A They did not have -- well, in a way, they
21 did. They looked at the amount of copper, the amount

1 of nutrients in copper and other materials settling
2 from the atmosphere. So, yeah, in effect, they did
3 look at how much would be settlement from the rooftop,
4 and you could then intuit from that how much would be
5 coming off the rooftops.

6 Q Without using intuition, did it specifically
7 address the -- did it specifically evaluate the impact
8 of rooftops?

9 A It evaluated the amount of copper that was
10 settled on the rooftops.

11 Q Specifically, did it address that in the
12 report? If I read your report, I could see those
13 figures?

14 A Yeah, you would see atmospheric deposition
15 rates, and it would deposit on those rooftops, the same
16 as it was on the streets and the parking lot.

17 Q So it doesn't really say -- address the
18 rooftop issue, does it?

19 A I can't think of any reason why they would
20 separate rooftops from other impervious surfaces.

21 Q So it doesn't?

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1 MS. BAER: Board's indulgence. Nothing
2 further. Thank you.

3 CHAIRPERSON HALE: Mr. Deuringer.

4 REEXAMINATION BY MEMBERS OF THE BOARD

5 BY MR. DEURINGER:

6 Q Mr. Kline, you indicated about these
7 infiltration devices, if they are properly maintained.
8 What, in your opinion, would you say is proper
9 maintenance of these infiltration devices? So if we
10 were to, you know, rule on something like this and
11 attach some criteria for maintaining them, what would
12 be the proper criteria?

13 A Well, first of all, you've got to have
14 monitoring wells, observation wells, within the
15 devices, and the plans show observation wells. You've
16 got to have a program there that assures that somebody
17 is going to be coming around every once in a while to
18 check those observation wells.

19 Q How often is once in a while?

20 A At least once a year. Once a year would be a
21 good basis. Then if you find that sediment has

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1 accumulated within the infiltration device, which may
2 be a problem with these, since I don't think a sediment
3 settling area is part of the design. That's going to
4 be the problem with them, what they thought was
5 sediment. And once you fill up a sediment, there's no
6 place to store the water, so it can then soak in the
7 soil and remove the pollutants.

8 There are other problems with them. But --
9 so you have to have a program where you come around and
10 see whether or not they're full of sediment, and if
11 they are, then you've got to have a program that comes
12 in and cleans them out.

13 Q Okay. But once a year you think would be
14 enough?

15 A It would be a good start. In all honesty,
16 very few urban counties in Maryland have anything
17 approaching an adequate maintenance program. My home
18 county, Baltimore County, has no budget at all for
19 maintaining storm water devices. I understand Prince
20 George's County has one of the most liberal storm water
21 maintenance projects. I'm not sure what it is here in

1 Anne Arundel County.

2 MR. DEURINGER: All right. Thank you.

3 CHAIRPERSON HALE: Mr. Boring.

4 BY MR. BORING:

5 Q Mr. Kline, did you take into consideration
6 what the copper of Route 50, being as close as it is to
7 the site, the copper being in the air and dropping?
8 Did you take that into consideration when you said the
9 2-1/2 pounds?

10 A It's sort of taken into consideration through
11 the average values that have been developed through the
12 nationwide urban runoff program, but, no, I didn't
13 specifically take into consideration Route 50.

14 Q Without the site being developed, what would
15 be the amount of copper that would be introduced into
16 the --

17 A From the 31-acre site of Woods Landing
18 Section Two, the estimates are that you would be
19 getting .06 pounds per year. With the proposed
20 development, you'd be getting 2.3 pounds per year,
21 about a 35-fold increase. If it fully complied with

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1 critical areas, that .7 pounds per year.

2 MR. BORING: Okay, thank you.

3 CHAIRPERSON HALE: Mr. Schafer.

4 BY MR. SCHAFFER:

5 Q Mr. Kline, I'd like to ask you about the
6 buffer. You said -- and I don't want to put words in
7 your mouth. If I'm wrong, please correct me.

8 But, off of an average rooftop, if you had a
9 100-foot buffer, 90 to 95 percent of the pollutants
10 would be naturally sifted before it got to the water;
11 is that correct?

12 A That's possible. There are things that could
13 be added between the rear of that house and the edge of
14 the buffer that would increase the likelihood of that
15 happening.

16 Q Okay. What my question is, is, if accepted,
17 -- approved Section Two of Woods Landing, as it is, it
18 has a 50-foot buffer. Tell me what's the -- does that
19 only eliminate -- will that cut it in half, the amount
20 of pollutants, or is it directly in proportion in the
21 follow-up with what you've just said? Are there things

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1 that can be added to that 50-foot buffer to assure
2 better -- taking the pollutants out?

3 A The 50-foot buffer benefits. It's a lot
4 better than having no buffer at all. There are things
5 that could be added to that 50-foot buffer that would
6 further enhance the benefits that it would provide.

7 From my recollection, it's not true that if
8 the 50-foot buffer is good, then a 100-foot buffer is
9 twice as good. It's more of a situation where if a 50-
10 foot buffer is good, then a 100-foot buffer is one-half
11 as good again. You know, it's that sort of
12 relationship, where it sort of slopes off.

13 Q What are these sort of additions? Can you
14 give me an idea of what you're talking about when you
15 say additions can be added to make it better?

16 A Well, it could be a rather shallow pond that
17 has a device in it called a level spreader, which is a
18 spillway, a stone spillway, or some other spillway,
19 that allows the pond to -- that's very broad and flat.
20 It's very level. It would take a great deal of care to
21 make sure it's level, so that when the pond begins

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1 overflowing, it overflows in a very thin sheet over top
2 of that stone. It spreads it out very evenly
3 throughout the entire length of the buffer.

4 The thing that causes buffers to fail, to be
5 ineffective, with large volumes of storm water, is that
6 if you don't spread it out very thin, if it's all
7 concentrated in a channel flow, then that moves very
8 quickly to the buffer. It's very little of it that has
9 a chance to soak into the forest floor where the
10 pollutant removal occurs.

11 Q Okay. With the plan as proposed with the 50-
12 foot buffer, does that flow directly into one certain
13 location, or is that offering a fairly adequate
14 infiltration?

15 A It's diffuse. It's not really concentrated
16 at any point, except perhaps when you get near some of
17 the shallow gullies that are located on the site.

18 MR. SCHAFER: Okay. Thank you very much.

19 CHAIRPERSON HALE: Mr. Murray.

20 MR. MURRAY: No further questions.

21 CHAIRPERSON HALE: Any further questions for

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1 this witness?

2 MR. BLUMENTHAL: No.

3 MS. BAER: None, thank you.

4 CHAIRPERSON HALE: You may be excused as a
5 witness.

6 I think, given the hour, we will not take
7 another witness tonight. All of the parties have
8 agreed that the first available date to continue this
9 hearing is Thursday, June 18th, at 6:30 p.m. in Council
10 chambers. And this hearing will continue on that date.

11 (Whereupon, at 9:24 p.m., the above-
12 entitled hearing was recessed.)

13 (Exhibits not attached.)

14 .

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CERTIFICATE OF NOTARY

I, ELAINE J. REICHENBERG, the officer before whom the foregoing testimony was taken, do hereby certify that the testimony which appears in the foregoing transcript was taken by me by magnetic tape and thereafter reduced to typewriting by me or under my direction; that said testimony is a true record of the testimony given; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony is taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.


ELAINE J. REICHENBERG
Notary Public in and for
the State of Maryland

My Commission Expires:

7/1/94



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BEFORE THE ANNE ARUNDEL COUNTY BOARD OF APPEALS

IN THE MATTER OF:

WOODS LANDING #2
JOINT VENTURE

:
:
: CASE NO. BA 10-92A
:
:
:

Monday, July 13, 1992

Pursuant to Notice, the above-entitled
hearing was held before BARBARA M. HALE, CHAIRPERSON of
the Anne Arundel County Board of Appeals, at the
Arundel Center, Annapolis, Maryland 21404, commencing
at 6:35 p.m., there being present on behalf of the
respective parties:

BOARD MEMBERS PRESENT:

JOSEPH A. JOHNSON
WILLIAM C. EDMONSTON, SR.
DAVID M. SCHAFER
T. GEORGE DEURINGER
ANTHONY V. LAMARTINA
P. TYSON BENNETT, Counsel to Board

ON BEHALF OF THE APPLICANT:

HARRY C. BLUMENTHAL, ESQUIRE

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ON BEHALF OF THE APPELLANT/PROTESTANT:

JOHN H. MURRAY, ESQUIRE

ON BEHALF OF ANNE ARUNDEL COUNTY:

JAMIE BAER, ESQUIRE

ALSO PRESENT:

CHARLES FRANK
JOSEPH ELBRICH

REPORTED BY: SUSAN DILLEY, NOTARY PUBLIC

- - -

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1 P R O C E E D I N G S

2 CHAIRPERSON HALE: The Anne Arundel County
3 Board of Appeals is convened this 13th day of July
4 1992, to continue with Case No. BA 10-92A, the Woods
5 Landing #2 Joint Venture, an appeal from an
6 administrative decision of the Office of Planning and
7 Zoning, granting approval of Subdivision No. 73-519 and
8 Project No. 91-065 for Woods Landing, Section Two,
9 Plats one through three, on property located in part on
10 the south side of Woods Landing Drive and bounding the
11 southern end of the Little Magothy River, Annapolis.

12 The parties had agreed at the prior hearing
13 on this case that Mr. Boring, who is unable to attend
14 this evening, may listen to the tapes in order to
15 continue with the case. Is that still agreed by all
16 the parties?

17 MR. BLUMENTHAL: Yes.

18 MR. MURRAY: Yes.

19 MS. BAER: Yes, ma'am.

20 CHAIRPERSON HALE: Thank you very much.

21 At the end of the last hearing, we had

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1 finished the cross-examination of the protestants'
2 witness, Mr. Klein. Do the protestants have further
3 witnesses?

4 MR. MURRAY: Yes, ma'am. One more. Before
5 we get into that, one preliminary matter. I have
6 received, since the last hearing, a copy of a letter
7 from Judge North, who's the Chairman of the Critical
8 Areas Commission to Ardath Cade, the Planning and
9 Zoning Officer in Anne Arundel County, which letter, in
10 two substantive respects, pertains to the issues before
11 this Board.

12 It is, in essence, a follow-up to Miss
13 Hairston's testimony. You may recall, she testified on
14 the first day of this hearing.

15 I would like to submit a copy of this letter
16 as part of the record just to complete the Critical
17 Area Commission's actions with respect to the issues
18 that we've already discussed in this case.

19 MS. BAER: Madam Chairman, I would object to
20 its admission.

21 For one thing, it's hearsay. I mean, this is

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1 not a situation where the gentleman is here who
2 authored the letter, where I can talk to him, ask him
3 questions, ask him how he came to any conclusions that
4 might be in existence in the letter.

5 It has -- in my opinion, it may not be an up-
6 to-date correspondence, insofar as the fact that it is
7 an April letter, and the position of the critical area
8 maybe changed since that time.

9 Generally speaking, I don't believe that's
10 generally the procedure of the Board to just allow
11 letters in without some basis or background made by a
12 real live witness.

13 CHAIRMAN HALE: Mr. Blumenthal?

14 MR. BLUMENTHAL: I haven't had a chance to
15 review the letter which is some six pages long with an
16 attachment.

17 I would object to its admission for the
18 purpose of the record, but I don't know if I have any
19 substantive objections or not.

20 CHAIRMAN HALE: Mr. Murray, do you have
21 copies of that letter you can provide to the other

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1 attorneys?

2 MR. MURRAY: Yes. Jamie has seen it and I
3 just gave a copy to Mr. Blumenthal.

4 CHAIRMAN HALE: All right. Then, we would
5 like to withhold ruling on that at the moment and go
6 forward with the case and see if it's necessary to deal
7 with it. Just proceed.

8 MR. MURRAY: Thank you. Then, our next
9 witness would be David Navecky.
10 Whereupon,

11 DAVID NAVECKY,
12 a witness, called for examination by counsel for the
13 Protestant, was duly sworn, and was examined and
14 testified as follows:

15 CHAIRMAN HALE: Would you give us your name
16 and address for the record, please, and spell your last
17 name.

18 MR. NAVECKY: My name is David Navecky, N-A-
19 V-E-C-K-Y. My address is 7101 Wisconsin Avenue, Suite
20 700, Bethesda, Maryland. The ZIP is 20814.

21 CHAIRMAN HALE: You may proceed.

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1 MR. MURRAY: Thank you.

2 DIRECT EXAMINATION

3 BY MR. MURRAY:

4 Q Mr. Navecky, what kind of business are you
5 in?

6 A I work for an environmental consulting firm
7 called Dames & Moore.

8 Q And what specifically do you do?

9 A I work in the water resources group. My
10 specialty is surface water resources and water quality.

11 Q What is your academic background?

12 A I have a Bachelor's Degree in Environmental
13 Science and a Master's Degree in Water Resources
14 Management.

15 Q When did you begin working in the water
16 resources environmental area?

17 A It was upon my graduation from my Master's
18 Degree which was in 1983.

19 Q Could you briefly review your work history
20 since that time?

21 A I have worked on a wide variety of projects

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1 in the past nine years including many projects dealing
2 with the impacts of various development projects on
3 water quality, dealing primarily with open -- source
4 pollution. I've also dealt with point source pollution
5 from storm water and industrial waste discharges. I'm
6 involved in a number of studies of watersheds,
7 including the Byrd River watershed in Baltimore County
8 and Rock Creek in Anne Arundel County.

9 Q In the course of your work, were you involved
10 in studying the affects of storm water management?

11 A Yes, I have. It's been a critical issue in a
12 number of my projects, including projects where impacts
13 to receiving waters was a critical issue, particularly
14 with class four waters which are trout streams -- trout
15 streams.

16 Q And have you had specific occasion to be
17 involved in water quality issues in the State of
18 Maryland?

19 A Yes. The majority of my work in the past
20 five years has focused in the State of Maryland,
21 including Anne Arundel County, Baltimore County,

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1 Montgomery County, Prince George's County, and Charles
2 County.

3 Q Mr. Navecky, have you had occasion
4 previously to qualify as an expert witness in the water
5 quality area?

6 A Yes. I've previously been qualified as an
7 expert witness in water quality before the Montgomery
8 County Planning Board and the Montgomery County Board
9 of Appeals.

10 Q Mr. Navecky, is that a copy of your
11 curriculum vitae?

12 A Yes, it is.

13 MR. MURRAY: I'd like to submit this as an
14 exhibit.

15 CHAIRMAN HALE: Any objection to receiving
16 his --

17 MS. BAER: No objection.

18 MR. BLUMENTHAL: No objection.

19 CHAIRMAN HALE: Protestant's Exhibit No. 5,
20 Mr. Navecky's curriculum vitae.

21 .

1 (Whereupon, the document was marked for
2 identification Protestant's Exhibit No. 5 and received
3 in evidence.)

4 MR. MURRAY: And I note at this time for the
5 Board to recognize Mr. Navecky as an expert in water
6 quality assessments.

7 CHAIRMAN HALE: Any objection?

8 MS. BAER: No objection.

9 MR. BLUMENTHAL: No objection.

10 CHAIRMAN HALE: He's recognized.

11 BY MR. MURRAY:

12 Q Mr. Navecky, did there come a time where you
13 became acquainted with the proposed Woods Landing 2
14 project?

15 A Yes, I have been acquainted with the project.

16 Q And would you explain what you know about it
17 and what you've done to become familiar with it?

18 A I have reviewed a number of documents,
19 including the site plans and the storm water management
20 plans, as well as several other documents which were
21 prepared. There was an assessment of potential

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1 environmental effects of Woods Landing prepared by Mr.
2 Klein. Primarily those three documents; the storm
3 water management plan, storm water management
4 computations, and Mr. Klein's report.

5 Q Has a member of your firm had occasion to
6 visit the site?

7 A Yes. The manager of our water resources,
8 Curt Vandecamp (sp. ph.), has visited the site.

9 Q And did you work with him in developing your
10 testimony tonight?

11 A Yes. We worked together on this testimony.

12 Q With respect to the proposal -- proposed
13 development -- did you identify any water quality
14 issues that you felt required further attention?

15 A During our review of the storm water
16 management plan and storm water management
17 computations, we identified a -- or several concerns
18 related with the proposed infiltration practices.

19 The first concern was related to the
20 suitability of the soils at the site. The recommended
21 infiltration rate for soils for use with infiltration

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1 practices, is soils with an infiltration rate of
2 greater than one-half inch per hour.

3 In the documents in which we reviewed, we
4 could not find any site specific data, and that is,
5 there were no field test results that we could review
6 which indicated that infiltration rates were determined
7 at the project site.

8 We reviewed the soil survey for Anne Arundel
9 County prepared by the Soil Conservation Service and
10 for the soil -- predominant soil on the site, they
11 provide a soil infiltration rate of .2 inches to two
12 inches, which indicates there are certain portions of
13 soils within that category which are not conducive to
14 infiltration practices. That is, the infiltration rate
15 is too low, and you will not get proper water quality
16 treatment from the soil column beneath the infiltration
17 trench.

18 At this point, we don't know where those
19 soils may or may not be located on the project site
20 without site-specific data.

21 The second issue we identified was the depth

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1 to ground water, typically referred to as seasonal high
2 water table when dealing with infiltration practices.

3 The general guidelines from the State of
4 Maryland Standards and Specifications for Infiltration
5 Practices recommends a minimum depth -- excuse me, they
6 refer to the depth from the bottom infiltration
7 practice to the seasonal high water table, which they
8 recommend a minimum distance of two to four feet. The
9 Metropolitan Washington Council of Governments
10 recommends a minimum distance of three feet.

11 The intent of the minimum distance is to
12 maximize the benefit from the infiltration practice to
13 the water quality benefits, with particular emphasis
14 on the dissolved nutrients, nitrogen and phosphorous.

15 The primary removal is provided by the soil
16 column beneath the infiltration practice. If that soil
17 column is too shallow, the infiltrating ground water
18 from the base of the infiltration trench will just
19 enter the ground water, and then they discharge to the
20 nearest surface water body.

21 The data in the storm water management plan

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1 and the storm water management computations for the
2 Woods Landing Section 2 plan provided data on depth to
3 ground water.

4 The depths were determined on an unknown
5 date. The documents suggested that the depth was
6 determined in January of 1991, perhaps February of
7 1991.

8 The seasonal high water table typically
9 occurs during the months of March through May following
10 the spring rains. So we have to have concern that the
11 depth of the water was -- depth of the ground water, as
12 determined in January or February of 1991, may not be
13 representative of seasonal high water table.

14 That is, the depth may be deeper than actual
15 conditions so that the depth between the design
16 infiltration trench, the bottom of the designed
17 infiltration trench, and the water table, may be
18 actually less than indicated in the plans.

19 We reviewed some data to help us evaluate
20 this condition. We looked at rainfall data for
21 Baltimore-Washington International Airport for the five

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1 months preceding January 1991, which indicated that
2 rainfall during that period was 20 percent below
3 normal, suggesting that the water table -- surface
4 water table, at that time may also have been below
5 normal rather than the seasonal high water table.

6 We also reviewed the Soil Conservation
7 Services soil survey for Anne Arundel County regarding
8 the seasonal high water table for the predominant soil
9 of the site which is the -- loam. And they recorded a
10 seasonal high depth to seasonal high water table at 1.5
11 to 2.5 feet, which is considerably higher than reported
12 in the storm water management computations. Offhand, I
13 believe those recorded depths from approximately five
14 feet to as much as 10 feet.

15 In summary, on our concerns related to the
16 infiltration practices, we have concerns whether or not
17 the design considered site-specific soils, whether the
18 soils are suitable for infiltration; whether the
19 seasonal high water table is properly determined and
20 considered in their design and location.

21 There is a recently reported -- recently

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1 published report from the Metropolitan Washington
2 Council of Governments of 1992, earlier this year,
3 which cites a 50 percent failure rate of infiltration
4 trenches on the coastal areas of Maryland. It's
5 primarily due to inadequate design, improper
6 installation and poor maintenance, and also, the
7 accumulation of sediment at the base of the trench.

8 What happens is that the trench is lined with
9 a -- it's referred to as a filter fabric and then the
10 trench is filled with rocks. Over time, the voids
11 between the rocks will fill up with sediments. Raw
12 sediment will accumulate at the inside surface of the
13 filter fabric and, therefore, block the exit of water
14 from the trench. And eventually, the trench will fill
15 up with water, and the next time it rains, you will no
16 longer have that water quality treatment benefit from
17 the infiltration trench.

18 Often, information available to -- indicate
19 that from the various factors, that failure will occur
20 in 50 percent of the trenches within five years. This
21 data suggests that within five to 10 years, that there

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1 will no longer be any water quality control provided at
2 the subject project.

3 We also reviewed the report prepared by
4 Richard Klein, entitled, "An Assessment of the
5 Potential Environmental Effects of Woods Landing 2,"
6 dated April 15, 1992.

7 Our objective in this review was to evaluate
8 the report's assessment of water quality conditions in
9 the Little Magothy River, and storm water pollutant
10 loads which were reported in the report.

11 We found that the storm water pollutant
12 loadings provided in the document are reasonable and
13 they are comparable to loadings that we had calculated
14 for a previous citing we had conducted for Anne Arundel
15 County using water quality monitoring data provided to
16 us by the Anne Arundel County Department of Planning
17 and Zoning.

18 We also are reasonably comfortable -- we are
19 comfortable with the report's assessment of water
20 quality conditions in the Little Magothy River.
21 They're consistent with our understanding of water

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1 quality in the Magothy River, as well as data we had
2 collected for literally dozens of tidal streams in Anne
3 Arundel County when we prepared the county's dredging
4 master plan several years ago.

5 The specific nutrient pollutant -- levels
6 which I'm referring to are found on page -- Table 1 of
7 the Klein report and we are very comfortable with those
8 nutrient pollutant loads for Rock Creek -- I'm sorry --
9 for the Little Magothy. And again, they are consistent
10 with data that we have developed from previous studies
11 for Anne Arundel County.

12 Dames & Moore is also in agreement with the
13 conclusion of the Klein report that decreasing the
14 imperviousness of the development will improve water
15 quality.

16 For example, decreasing imperviousness would
17 include greater green space or maintaining the more
18 extensive area, the existing -- that are currently
19 existing on the site.

20 We have reviewed data from Anne Arundel
21 County to demonstrate this information. We have looked

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1 at total phosphorus export rates, which is the amount
2 of phosphorus which is discharged from a watershed, in
3 relation to the percent imperviousness of the site, and
4 found that a linear relationship, whereas the
5 imperviousness of the site increases, the export of
6 total phosphorus also increases.

7 So likewise, there would be a decrease in the
8 phosphorus export from the property if the
9 imperviousness were to decrease.

10 Studies have also shown that forest and
11 forest buffer strips are effective in reducing runoff
12 and filtering pollutants from urban runoff. While
13 these studies do not conclusively demonstrate the exact
14 incremental benefit of various woods and buffers, it is
15 our opinion that water quality impacts from Woods
16 Landing Section 2 would be less if the 100 foot
17 critical area buffer were incorporated into the
18 development plans.

19 We also expect that water quality impacts
20 would also be less if a greater percentage of the
21 existing trees on the site were also retained.

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1 Q Mr. Navecky, did you have occasion to prepare
2 a report in preparation for your testimony tonight?

3 A Yes. Yes, I did. I have a report here.

4 Q And does it contain reference sources
5 substantiating your conclusions?

6 A Yes, it does. It basically summarizes the
7 information I just presented to the Board, and provides
8 references to the data I have referred to. Other data
9 which is referred to is provided as attachments to the
10 report.

11 MR. MURRAY: I would submit this as an
12 exhibit at this time.

13 MR. BLUMENTHAL: Madam Chairman, I would
14 object only for the purpose of any material that's in
15 this rather lengthy exhibit, to which the witness did
16 not testify, which does not directly relate to his
17 testimony.

18 If it is source material, or clarifying, then
19 fine. But I wish not to have to read through this
20 thing right now. I have no problem if this is being
21 submitted only to the extent that it is cumulative and

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1 substantive of the testimony of the witness.

2 If there are, however, items in here upon
3 which the witness did not testify, and which I have not
4 heard, then I would object for that particular purpose,
5 and for that purpose alone.

6 CHAIRPERSON HALE: Ms. Baer?

7 MS. BAER: Ms. Hale, I would object in the
8 same fashion that Mr. Blumenthal has stated.

9 MR. BLUMENTHAL: I have no problem to its
10 submission, so long as it is accepted for the limited
11 purpose for which it is offered, and not for anything
12 else that may be contained herein.

13 CHAIRPERSON HALE: Mr. Murray?

14 MR. MURRAY: The report, as Mr. Navecky just
15 testified, is a short report and contained -- and
16 attached to it are four -- I believe four attachments,
17 which contain references and supporting data for the
18 report.

19 Perhaps I could verify with Mr. Navecky that
20 the attached data are not, if you will, substantively
21 different, but rather, as Mr. Blumenthal stated,

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1 cumulative and supportive of your report itself. Is
2 that correct?

3 THE WITNESS: Yes. The data provided in the
4 attachments are data that were referred to in my
5 assessment.

6 Attachment one is the rainfall data from BWI.

7 Attachment two is the Metropolitan -- a
8 portion of the Metropolitan Washington Council of
9 Governments report on infiltration practices.

10 And attachment three are the -- the little
11 phosphorus export rate data that were developed and are
12 used in the Anne Arundel County data.

13 CHAIRPERSON HALE: We'll let that in, Mr.
14 Murray.

15 MR. MURRAY: That's all I have.

16 CHAIRPERSON HALE: That will be Exhibit
17 Number 6 (sic), Mr. Navecky's report.

18 (Whereupon, the document was marked for
19 identification Protestant's Exhibit No. 6 and received
20 in evidence.)

21 CHAIRPERSON HALE: Is that it?

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1 MR. MURRAY: That's all my questions. Yes.

2 Thank you.

3 CHAIRPERSON HALE: Mr. Blumenthal?

4 CROSS-EXAMINATION

5 BY MR. BLUMENTHAL:

6 Q Mr. Navecky, have you any evidence, hard
7 evidence, that that which has been proposed will not
8 work in the fashion in which it is intended, or just
9 merely general observations on your part? And I'm
10 talking with regard to storm water management.

11 A (No response.)

12 Q Is there anything you can point to, from what
13 you have examined, that positively, absolutely, says
14 that that which has been proposed will not function in
15 the fashion in which it is intended?

16 A There are, I believe, two of the infiltration
17 trenches which are in the known range for depth,
18 between the base of the infiltration trench and the
19 depth of the water table. Not knowing whether or not
20 that depth is seasonal high water table, I would
21 question the -- whether or not those trenches would

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1 function properly.

2 Q But if it was in the minimum range -- a range
3 is just that. If it is within the minimum, then they
4 are acceptable; is that correct?

5 A The question remains in my mind whether or
6 not they are in the minimum range, since I have no data
7 to me which tells me that the depth to the water table
8 is actually the seasonal high water table, which is the
9 critical factor here.

10 Q Well, my question to you originally was, do
11 you have any actual, positive information that says
12 that which is proposed will not work? And do I
13 understand you correctly to say that you have no
14 information that would lead you to a positive
15 conclusion, one way or the other?

16 A We have data from the Soil Conservation
17 Surveys for Anne Arundel County, which indicates that
18 site soils may be below the minimum standard of one-
19 half inch -- inches of infiltration rate per hour.
20 That data suggests to me that the infiltration trenches
21 could fail.

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1 Q Is that site specific to this particular
2 site, that information from the service?

3 A The soil survey includes maps, soils across
4 the entire county. They actually provide area maps in
5 which the soils are mapped, as determined by the Soil
6 Conservation's soil scientists, which indicates that --
7 and confirms that there -- the predominant soil on the
8 site is the -- loam which has an infiltration rate
9 range of .2 to two inches per hour.

10 Q As an expert, again I will ask you, can you
11 say that, necessarily, that which has been proposed and
12 which you have examined will fail?

13 A No, I can't say that.

14 Q Of all the documents that you have examined,
15 have you examined the soil borings that were taken for
16 this property?

17 A Yes, I have.

18 Q And I understood you to say you did not
19 examine soil borings.

20 A The soil borings did not have -- if I stated
21 that I did not review soil borings, I was incorrect. I

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1 did review soil borings. The soil borings did not
2 provide specific infiltration rates.

3 Q When you stated generally that a decrease in
4 impervious surfaces increases water quality, and more
5 trees increases water quality, is that not axiomatic to
6 any given situation?

7 A That statement is true for -- it's generally
8 accepted principle in hydrology and water quality.

9 MR. BLUMENTHAL: Thank you. I have no
10 further questions.

11 CHAIRPERSON HALE: Ms. Baer?

12 MS. BAER: Thank you.

13 CROSS-EXAMINATION

14 BY MS. BAER:

15 Q You were indicating, sir, that the soils
16 information that you used as one of the bases of your
17 analysis was provided to you from a government agency.
18 What agency was that?

19 A The soil survey that I referred to?

20 Q That's correct.

21 A That's the U.S. Department of Agriculture,

1 Soil Conservation Service.

2 Q And did I understand you to say that that
3 covers all of Anne Arundel County?

4 A Yes.

5 Q At what intervals are those soils tested? In
6 other words, is it a survey based on one sample per
7 square mile, or one sample per square foot? What is
8 the range of testing that is done?

9 A I am unfamiliar with the -- the density of
10 sample plots that are used in the soil survey.

11 The soil survey indicated that the
12 predominant soil was the -- loam, which was confirmed
13 by the storm water management plan computations
14 provided to me.

15 Q So you really don't know from the Soil
16 Conservation Survey what is actually on the site? I
17 mean, that survey alone didn't really tell you that,
18 because you don't know if that site was even sampled?

19 A No, I do not.

20 Q Would you say that it is correct that in the
21 determination of soils and how they react, and what

1 they could support, is generally done by an engineer
2 who has a specialty in soils engineering?

3 A I don't believe I can comment on who commonly
4 conducts infiltration tests for soil borings or
5 infiltration practices.

6 Q Would you agree that there is, in fact, a
7 specialty of engineering that deals with soils?

8 A Certainly there is in the geotechnical field.

9 Q And would you say that a geotechnical
10 engineer is trained in soils and the ability of soils
11 to react to certain situations?

12 A I would expect that you would have engineers
13 who have the strong academic background in soil
14 science.

15 Q And do I understand that you are not an
16 engineer; is that correct?

17 A No. I'm an environmental scientist.

18 Q As far as you are aware, do the plans for the
19 proposed development meet county requirements?

20 A I am not familiar with the county
21 requirements for infiltration practices. I am familiar

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1 with the Maryland State's standards and specifications
2 for infiltration practices, which provide the minimum
3 standards which must be adopted by the counties, so the
4 county standards would either be comparable or more
5 stringent.

6 Q When you reviewed Mr. Klein's report, did you
7 rely on the information therein, or did you analyze the
8 basis of Mr. Klein's report?

9 A We evaluated the data that was available to
10 us from previous studies for Anne Arundel County, to
11 calculate pollutant export rates for nitrogen and
12 phosphorus, and evaluated the pollutant export rates
13 which were used by Mr. Klein in his report, and
14 determined that those rates were comparable in, I would
15 say, probably 10 percent.

16 Q Did I hear you include, or did you not, that
17 you also looked at his copper concentrations?

18 A We did not review his copper pollutant --
19 rates.

20 Q What -- did I understand you to say, and
21 correct me if I'm wrong, that you have done previous

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1 work having to do with Rock Creek; is that correct?

2 A Yes, it is.

3 Q Have you done previous work regarding the
4 Little Magothy?

5 A No, I have not.

6 Q What concentrations were used in your Rock
7 Creek analysis? What did you find in Rock Creek that
8 makes you feel as though it is comparable to the Little
9 Magothy?

10 A I don't have the Rock Creek data with me at
11 this time. The data evaluation that we conducted in
12 the office, we compared the pollutant export rates,
13 which were provided in pounds per acre, per year, and
14 those were the factors which we evaluated.

15 Q So did you -- if I understand you correctly
16 -- assume that what was true of Rock Creek was also
17 true for Little Magothy?

18 A Well, you can't just compare pollutant
19 loading rates with pollutant loading rates. You need
20 to also consider the land use, the predominant land
21 uses, within that drainage basin -- each drainage --

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1 each land use category will have different pollutant
2 loading rates. As you increase intensity from an
3 undeveloped lot to a lot that is 100 percent
4 impervious, you'll have an increase in pollutant
5 loading rates.

6 Q So if I understand you correctly, it would --
7 what you are saying is that you would compute it --
8 these pollutant loading rates -- differently if you
9 were outside of the city in a truly urban setting, as
10 opposed to if you were in a rural setting, where you're
11 dealing with just a residential housing development?

12 A This is correct. And we considered the land
13 use within the drainage basin, when we compared our
14 pollutant loading rates, to make sure we were not
15 comparing different land uses.

16 Q You referred to Mr. Klein's Exhibit 1, I
17 believe, as you called it. Table 1.

18 A Yes.

19 Q And in that Table 1, in the listing -- have
20 you seen this table before?

21 A I haven't seen that table specifically, no.

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1 Q Do you have a copy of Mr. Klein's report that
2 you are referring to in your hand, or on the table?

3 A Yes.

4 Q Do you know if that report presumes or
5 assumes, as part of its basis, a saltwater environment,
6 or a freshwater environment?

7 A For referring to the Little Magothy?

8 Q Correct.

9 A With respect to the pollutant loading rates?

10 Q Correct.

11 A Well, the pollutant loading rates would
12 depend on the -- whether or not the receiving water is
13 tidal, or nontidal, or brackish.

14 Q Now, did you have any opportunity to, as a
15 basis for your report, evaluate the Magothy River, or
16 did you not consider the Magothy River, as opposed to
17 the Little Magothy?

18 A We reviewed the background data that was
19 provided in a report titled "Magothy River
20 Comprehensive Watershed Management Plan," a master plan
21 study which provides information on existing water

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1 quality conditions in the Magothy River.

2 There are a few references, although not a
3 lot of details, provided on the Little Magothy River in
4 that report.

5 Q Are you aware of what the interconnecting
6 processes are, if any, between the Little Magothy and
7 the Magothy?

8 A Not in any detail. To evaluate the inner
9 processes between the Little Magothy River and the
10 Magothy River would entail a rather comprehensive
11 estuarine model in order to determine the interaction
12 between those two surface water bodies.

13 Q So it would be fair to say that perhaps some
14 of the information regarding the Magothy River is not
15 necessarily true of the Little Magothy?

16 A That's possible. It could be the other way
17 around as well.

18 MS. BAER: I have no further questions.

19 CHAIRPERSON HALE: Members of the Board?

20 BOARD MEMBERS: (No response.)

21 CHAIRPERSON HALE: Seeing no questions -- Mr.

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1 Murray?

2 MR. MURRAY: A couple of follow-ups.

3 REDIRECT EXAMINATION

4 BY MR. MURRAY:

5 Q Mr. Navecky, in reviewing the proposal, did
6 you rely on data provided by the developer, or his
7 consultants?

8 A We did rely on their storm water management
9 computations, and their storm water management plans,
10 yes.

11 Q And in reviewing that, did you notice that
12 there was a plan to use something called an attenuation
13 trench?

14 A Yes, there are nine trenches proposed for the
15 project, seven which are being referred to as
16 infiltration trenches, and two which are being referred
17 to as attenuation trenches.

18 Q Does an attenuation trench provide water
19 quality benefits?

20 A The attenuation trenches were designed to
21 provide quantity control, rather than quality control.

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1 Quality control from the infiltration -- excuse me --
2 the attenuation trenches would be expected to be less
3 than the infiltration trenches.

4 The attenuation trench -- one of the larger
5 attenuation trenches of the two -- was located -- the
6 base of that trench was located within 1.5 of the
7 ground water depth reported in their document, which
8 indicates that it is below the standards in order to
9 use that filtration practice for water quality
10 purposes.

11 So their primary objective, if I might
12 summarize, is quantity control, rather than for quality
13 control.

14 Q Mr. Blumenthal asked you whether the -- you
15 could be absolutely certain that the problems you have
16 described with the storm water management system, as
17 proposed, would come to pass. And you indicated, no,
18 you could not be absolutely certain. But can you make
19 that conclusion with a reasonable degree of
20 professional certainty?

21 A No, I cannot. I would be very hesitant to

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1 say that the infiltration practices or infiltration
2 trenches on the site would be operating at design
3 capacity within five years.

4 Q Would you clarify that answer for me, please?
5 Are you indicating that you think there is a reasonable
6 certainty that they will not work --

7 MR. BLUMENTHAL: Objection. Counsel is now
8 trying to rehabilitate and lead the witness, who has
9 responded to his question. If he asks a question,
10 fine, but let's not lead him where counsel would like
11 him to go. This is his own witness.

12 CHAIRPERSON HALE: Would you rephrase the
13 question, please.

14 MR. MURRAY: Thank you. That's what I was
15 trying to do before I was interrupted.

16 BY MR. MURRAY:

17 Q Mr. Navecky, my question is, can you say,
18 with a reasonable degree of certainty -- and I stress
19 reasonable degree of certainty -- of whether or not the
20 proposed infiltration mechanisms will work as they are
21 designed to work?

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1 A No, I cannot.

2 MR. MURRAY: Thank you.

3 CHAIRPERSON HALE: Any further questions for
4 this witness? Mr. Blumenthal?

5 MR. BLUMENTHAL: Only in response to the
6 question asked by counsel for the county.

7 RECROSS EXAMINATION

8 BY MR. BLUMENTHAL:

9 Q You said that you did not examine the copper
10 loading rates; is that correct? Did I understand your
11 answer correctly?

12 A That is correct.

13 Q Yet you testified, in your report on page
14 two, paragraph 3.0 states, "We feel the assessment of
15 water quality conditions and storm water pollutant
16 loads presented in the Klein report are reasonable."

17 Why did you not test the copper loading
18 rates?

19 A The objective of our review was to -- I think
20 that point is clarified in other portions of the
21 report, where we specifically refer to nutrient

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1 pollutant rates. And the objective of our review was
2 to evaluate the nutrient pollutant loading, which is a
3 critical factor in the growth of algae and aquatic
4 plants in the Little Magothy River, as well as the
5 Magothy River.

6 Q Is copper a function, or not a function, of
7 that?

8 A Copper is not a -- what is commonly referred
9 to as a nutrient for aquatic plants.

10 Q Then are you saying that, contrary to what
11 you have said and is written, you have not tested all
12 pollutant loads, as stated by Mr. Klein in his report?

13 A I -- that is correct. We did not look at the
14 copper loads.

15 Q Are there other loads that you did not look
16 at?

17 A I believe the only loadings that he referred
18 to in this report are nitrogen, and phosphorus, and
19 copper. And we reviewed nitrogen and phosphorus. We
20 did not review copper.

21 MR. BLUMENTHAL: Thank you. I have no

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1 further questions.

2 CHAIRPERSON HALE: Any further questions for
3 this witness?

4 MS. BAER: The Board's indulgence. I do have
5 one question.

6 RE CROSS EXAMINATION

7 BY MS. BAER:

8 Q Sir, is it true that there is no standard for
9 pollutant levels in the waters, formulated by the State
10 of Maryland?

11 A Are you referring to discharges -- water
12 quality of the discharge, or water quality of the
13 receiving water?

14 Q Water quality of the receiving water.

15 A The State of Maryland has standards for
16 ambient water quality, based on the -- the type of
17 water body that is being evaluated. There are four
18 classes; class one, two, three, and four. So depending
19 on what category the Little Magothy would fall into,
20 there would be applicable water quality standards at
21 the state level.

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1 Q And did you assess the Little Magothy in
2 those terms?

3 A No. We did not compare data, either existing
4 water quality data, nor did we prepare -- calculated,
5 or modeled data to compare with the water quality
6 standards.

7 Q Would it be fair to say then that you really
8 just didn't look at the pollutant level in the Magothy,
9 and that just wasn't part of what you were hired to do?

10 A We evaluated the pollutant loadings from the
11 project. That was the -- one of the primary objectives
12 of our study, including evaluation of storm water
13 management plans.

14 Q Now, is there a Maryland State standard for
15 discharge?

16 A There are currently, for this project, there
17 are no discharge quality requirements for a residential
18 development, unless it was within the purview of the
19 critical areas law.

20 There are water quality standards
21 implemented for storm water discharges. Those are

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1 primarily for storm water discharges from industrial
2 and commercial sites.

3 And there is currently under the -- there are
4 new regs which are being -- currently being implemented
5 at the state level that were adopted by the U.S.
6 Environmental Protection Agency, which will be
7 implementing a -- system for storm water discharges.

8 I believe that the subject of -- water,
9 addressed specifically, would be covered in any
10 municipal permit application, which is required to be
11 submitted by Anne Arundel County. And that permit
12 application would address pollutant discharges from
13 residential areas.

14 Q So as I understand it, the standards you're
15 talking about for this situation don't exist yet. They
16 are still being formulated.

17 A That's correct. The permit applications are
18 to be submitted by the municipalities in October or
19 November of this year, at which time the permit
20 conditions will be established. Or the -- have the
21 counties submit their permit applications, and the

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1 municipality is required to submit a plan to manage
2 their storm waters, in an attempt to minimize non-point
3 source pollutant loading.

4 Q So that at this point this standard does not
5 -- this project does not have a standard that it has to
6 meet in that regard? I mean, there may be some in the
7 future, but not right now?

8 A That is correct, unless it's -- there is no
9 standard in the EPA's non-point source discharge
10 elimination system permit.

11 Q Is the simple answer to that, "No, there is
12 no standard"?

13 A No, there is no standard.

14 MS. BAER: Thank you. No further questions.

15 CHAIRPERSON HALE: Any further questions for
16 this witness?

17 Seeing none, you may be excused.

18 (Whereupon, the witness was excused.)

19 CHAIRPERSON HALE: Mr. Murray, does that
20 conclude your case?

21 MR. MURRAY: With the exception of renewing

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1 my request to introduce the exhibit that I began the
2 night with, yes.

3 (Whereupon, there was a discussion off
4 the record.)

5 CHAIRPERSON HALE: The Board would like to
6 know whether Mr. Blumenthal would like some time to
7 review that proposed document, or whether you would
8 rather wait until after the county presents its case
9 and have the Board tell them whether to bring it in.

10 MS. BAER: Ms. Hale, I'm familiar with the
11 document. My objection stands. I don't think that Mr.
12 Blumenthal could have had a chance to read it. We've
13 all been involved in the same hearing for all this
14 time. Mr. Blumenthal, he's good, but he's not that
15 good.

16 So I think it would be reasonable for us to
17 have an opportunity for us to read it, whether it is
18 before or after the county's case.

19 (Whereupon, there was a discussion off
20 the record.)

21 CHAIRPERSON HALE: The Board has a problem

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1 with the numbers on the exhibit list that needs to be
2 clarified before we go any farther. So we can take
3 this time to take a break and give Mr. Blumenthal a
4 chance to review that while we clear up the exhibit
5 list. Is that agreeable?

6 MR. BLUMENTHAL: While counsel is trying to
7 help me out, there are 18 citations to COMAR -- let me
8 review it. I'll try to.

9 CHAIRPERSON HALE: We'll go off the record
10 and clarify the exhibit list.

11 (Whereupon, there was a brief recess.)

12 CHAIRPERSON HALE: I apologize. I had some
13 errors in the numbers of the protestant's exhibits, and
14 I would like to get that straight before we go any
15 further.

16 When we began tonight, we should have started
17 with Mr. Navecky's curriculum vitae as Exhibit Number
18 9.

19 (Whereupon, the document was marked for
20 identification Protestant's Exhibit No. 9 and received
21 in evidence.)

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1 CHAIRPERSON HALE: And then Mr. Navecky's
2 report would be Exhibit Number 10.

3 (Whereupon, the document was marked for
4 identification Protestant's Exhibit No. 10 and received
5 in evidence.)

6 CHAIRPERSON HALE: Now, are there objections
7 to Mr. Navecky's report.

8 MR. BLUMENTHAL: I think that was already in,
9 subject to the fact -- the constraint that it was
10 cumulative.

11 CHAIRPERSON HALE: And the exhibit that we
12 have left open was Judge North's letter.

13 MR. BLUMENTHAL: Yes.

14 CHAIRPERSON HALE: I think that the Board had
15 also had received testimony from a representative of
16 the Critical Areas Commission, that we should stand
17 with that testimony and not take in letters, which are
18 usually not our practice, so we won't admit that
19 exhibit.

20 Now, Mr. Murray, do you have additional
21 witnesses?

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1 MR. MURRAY: No.

2 CHAIRPERSON HALE: Ms. Baer?

3 MS. BAER: I would call Meo Curtis.

4 Whereupon,

5 MEOSOTIS CURTIS,

6 a witness, called for examination by counsel for the
7 County, was duly sworn, and was examined and testified
8 as follows:

9 CHAIRPERSON HALE: Please give us your name
10 and address and spell your last name for the record?

11 THE WITNESS: My name is Meosotis Curtis. My
12 address is 2664 Riva Road, Annex 6303, Annapolis,
13 Maryland 21401.

14 DIRECT EXAMINATION

15 BY MS. BAER:

16 Q Ms. Curtis, while Ms. Hale generally asked
17 you to spell your last name, which is fairly easy in
18 this case, would you spell for the Board your first
19 name?

20 A Sure. My first name is Meosotis -- "M," as
21 in Mary, E-O-S-O-T-I-S.

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1 The last name is Curtis. C-U-R-T-I-S.

2 CHAIRPERSON HALE: Thank you.

3 BY MS. BAER:

4 Q Ms. Curtis, where are you employed?

5 A I am employed by the Anne Arundel County
6 Office of Planning and Zoning, in the Environmental
7 Division.

8 Q And are you college educated?

9 A Yes, I am. I have a Bachelor's of Science
10 from the College of William and Mary in biology. I
11 have a Master's of Science in Marine Studies from
12 College of Mind Studies, University of Delaware.
13 That's an interdisciplinary degree involving aspects of
14 biological, chemical, physical, and geological
15 oceanography, and also ocean engineering.

16 Q And what is your current employment? What is
17 your position?

18 A I'm an environmental planner with the
19 Environmental Division. I am the county's End Stream
20 and Estuarine Water Quality Monitoring Coordinator.

21 Q Are you published? Have you -- in the

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1 environmental field?

2 A Yes. I have a variety of publications
3 dealing with water quality issues, freshwater and
4 estuarine systems, involving dissolved oxygen, algae
5 blooms, and while working with the county, looking at
6 nutrient concentrations, heavy metals concentrations,
7 and sediment concentrations.

8 Q And were you formally associated with the
9 Maryland and Metropolitan Washington Council of
10 Governments and, if so, in what capacity?

11 A Yes. My professional experience has centered
12 on water quality issues and freshwater and estuarine
13 systems. Since 1984 I've been involved with these
14 issues, first with the Maryland Department of the
15 Environment, Chesapeake Bay Monitoring Program,
16 involved in monitoring and analyzing water quality
17 parameters in the Chesapeake Bay program.

18 I was also involved with the Metropolitan
19 Washington Council of Governments, Department of
20 Environmental Programs, the Annapolis and Potomac
21 River Water Quality Monitoring Programs.

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1 And as part of my work experience there I
2 worked very closely with Thomas Schuller, who developed
3 the so-called green book, the Urban Best Management
4 Practices Guidebook, which was one of the references
5 quoted in the assessment of the potential of the
6 environmental effects of Woods Landing 2.

7 Q I'm going to show you a document which
8 appears to be your resume. Can you identify that for
9 me?

10 A Yes. This is my resume.

11 Q Would you hand that copy down to counsel so
12 they can take a look at it? Unfortunately, we only
13 have a couple of copies.

14 MR. MURRAY: We've seen it.

15 MS. BAER: Madam Chairman, we would ask that
16 Ms. Curtis' resume be marked as, I believe, County
17 Exhibit Number 1 and admitted.

18 CHAIRPERSON HALE: Any objection?

19 MR. MURRAY: None.

20 CHAIRPERSON HALE: County Exhibit Number 1
21 will be Ms. Curtis' resume.

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1 (Whereupon, the document was marked for
2 identification County's Exhibit No. 1 and received in
3 evidence.)

4 MS. BAER: We would also like to offer Ms.
5 Curtis as an expert in the field of, among other
6 things, I suppose, marine studies and biology,
7 especially as to environmental science having to do
8 with water quality and -- I'm going to pronounce this
9 wrong, because I always do -- estuarine --

10 MR. BLUMENTHAL: Estuarine.

11 MS. BAER: Estuarine. Thank you. Estuarine
12 considerations.

13 CHAIRPERSON HALE: Is there any objection?

14 MR. MURRAY: No.

15 CHAIRPERSON HALE: She will be so admitted --
16 recognized.

17 BY MS. BAER:

18 Q Ms. Curtis, we've heard a lot in the
19 testimony about point sources and non-point sources of
20 pollution. Can you explain what that means?

21 A All right. Traditionally, a point source of

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1 pollution involves a specific outfall, a concentrated,
2 consistent flow, generally from a pipe, or other
3 defined source.

4 A non-point source of pollution comes from
5 many different sources. In some cases, it may come
6 from an outfall, but the original sources are from a
7 variety -- from parking lots, across lawns, from
8 forested areas. So you're talking about a wide area
9 draining into a receiving body of water, as opposed to
10 a distinct outfall, which is what you're talking about
11 with a point source.

12 Q Can you give us an example of a point source,
13 as opposed to a non-point source?

14 A Sure. The ones that we typically think of
15 are waste water treatment plant discharges and
16 industrial plant discharges.

17 Q The kind of source that's involved with the
18 proposed Woods Landing, Section 2, is that a point
19 source, or a non-point source?

20 A It's a non-point source. And as was
21 testified earlier, the state and the federal government

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1 is currently evaluating how to define pollutant
2 loading, or pollutant effects from non-point source
3 discharges.

4 Q Does that mean that there are no standards
5 currently in effect?

6 A That is correct.

7 Q Were you given a copy of a document called
8 "An Assessment of the Potential Environmental Effects
9 of Woods Landing 2," that was prepared by Mr. Klein?

10 A Yes, I was. And I was requested to look at
11 the section on storm water impacts from this
12 development.

13 Q And did you have an opportunity to review
14 those portions of the report that dealt with storm
15 water impacts of Woods Landing 2, or the proposed Woods
16 Landing 2?

17 A Yes, I did. And I developed a document which
18 was essentially on the water quality criteria and
19 copper information that was presented in that
20 assessment.

21 Q Did you -- pointing your attention, in fact,

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1 to the discourse or discussion on copper what, if
2 anything, did you observe as to the assumptions made by
3 Mr. Klein in coming to his conclusions?

4 A Well, there are three errors in his
5 assumptions concerning the copper loadings and copper
6 concentrations.

7 The first error was the criteria that he
8 used. The criteria that he used, of 6.1 micrograms per
9 liter, is a marine -- excuse me -- the criteria that he
10 used of 2.9 micrograms per liter only -- is valid only
11 in marine systems.

12 The Little Magothy River is an estuarine
13 system, and the appropriate copper concentration --
14 copper standard for estuarine systems is 6.1 micrograms
15 per liter. So we're talking about a standard that's
16 two times the value that he quoted -- that's quoted in
17 this assessment.

18 Q When you say the standard that he used was
19 two times, is that two times more severe, or is it --

20 A The standard that he used was 50 percent of
21 the standard that would be used in estuarine systems.

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1 Approximately 50 percent.

2 Q And you indicated there were -- to use your
3 term -- three errors. That basically is one error is
4 that computation?

5 A That's right.

6 The second error dealt with the copper
7 concentration that he used to calculate the loadings.
8 The copper concentration that he mentioned was, I
9 think, 114 micrograms per liter. And I went back to
10 the source that was mentioned there, 100 and -- which
11 is the Urban Best Management Practices by Tom Schuller,
12 and I went back to the source. 114 micrograms per
13 liter is a concentration that was measured in only one
14 percent of all the observations.

15 In other words, 99 percent of the actually
16 measured concentrations were less than 114 micrograms
17 per liter. So --

18 Q I'm sorry, were they substantially less?

19 A Yes. The mean value was .47 micrograms per
20 liter. Again, less than 50 percent of the value that
21 was used. I mean, 47 micrograms per liter. Sorry.

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1 Q And would you say that that is a second cause
2 for questioning the results that Mr. Klein came to?

3 A Yes. Because you're talking about a factor
4 of two there, when you are doing the copper
5 concentration -- copper loadings.

6 Q Now, you also -- you indicated there were
7 three, as you put them, errors. What was the third
8 one?

9 A The third error involved the calculation that
10 was used to evaluate what the copper contributions to
11 the receiving body of water was. I, again, went to the
12 Urban Best Management Practices Handbook and there is
13 an example in there of calculating receiving body
14 effects of copper concentrations.

15 A point that was made there is that you have
16 to consider is dilution effects of the entire
17 watershed, when you're discussing the effects of a
18 particular development on receiving bodies of water.

19 I went through and I did, as an example, I
20 did a calculation and I discovered that the increase in
21 copper concentrations to the receiving body of water,

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1 when you include total solution from the entire
2 watershed, not just from the development, is so small
3 that we would not be able to measure it by the
4 currently used techniques for measuring copper.

5 Q Did you observe in Mr. Klein's report that,
6 in his opinion, the uncontrolled -- that the copper
7 released from the site would, "Cause a violation of the
8 water quality standard over 2.5 acres of the Little
9 Magothy River"? Do you recollect the portion of his
10 report saying that?

11 A Yes, I do. And I was uncertain as to how he
12 calculated that area because in order to determine what
13 the end stream, the receiving body effects will be, you
14 have to know something about that receiving body's
15 characteristics.

16 On this point, I contacted the Maryland
17 Department of the Environment, Standards and Water
18 Quality Division. And in estuarine systems, it's
19 extremely difficult to assess what the real loadings
20 will be, what the real concentrations will be, because
21 there is -- an extremely complex area interaction going

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1 on when fresh water, as in storm water runoff, meets
2 the tidal water.

3 Typically, in storm water runoff, when you're
4 talking about things like heavy metals, and nutrients
5 also, you're talking about what's called a particulate
6 -- a suspended portion, and a soluble portion.

7 The urban runoff program results indicate
8 that copper in storm water is carried as 50 percent
9 particulate/50 percent soluble. It's the soluble
10 portion which really represents the potential toxic
11 effects to organisms in the receiving streams.

12 The particulate portion, when fresh
13 water/storm water hits, the tidal portion typically
14 settles out, and then because of these water chemistry
15 interactions that you're getting in the saltwater, you
16 often get some of the soluble portion being essentially
17 converted to the particulate portion, and settling out.

18 Q Now, this particulate portion that you've
19 mentioned, can you give us a sort of concrete example,
20 and not necessarily in chemical terms, but just a
21 concrete example of what it means to have this

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1 particulate nature?

2 A Well, a particulate nature would be something
3 that would be -- more like dirt. Something that is
4 actually suspended in the water column. A particle of
5 something, only a fine particle of something in a water
6 column. Something that has more mass.

7 Q Does this particulate quality tend to
8 pollute?

9 A Yes, it does. In fact, the particle
10 component in -- suspended sediments, and we all know
11 about dirt entering our receiving bodies of water in
12 storm water runoff. That's a big particulate
13 component.

14 Q Now, the soluble stuff. Now, how is that
15 different from the particulate?

16 A The soluble component is actually dissolved.
17 If you wanted to think of it that way in the water
18 column.

19 It undergoes more complex direct interactions
20 with the other dissolved components in the water
21 column.

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1 Q Now, when comparing or looking at the state
2 level or standard, are they talking about the soluble
3 components or the particulate components?

4 A They are actually talking about totals.

5 Q And how does Mr. Klein's report address the
6 particulate and soluble difference?

7 A He is only talking about totals, also, based
8 on the 114 micrograms per liter.

9 Q Does he distinguish between the particulate
10 and the soluble?

11 A No.

12 Q Is that important?

13 A It is, if you're going to be discussing real
14 toxic effects to organisms in the receiving body of
15 water.

16 Q And why is that?

17 A Because if you're going to be discussing the
18 real toxic effects, you have to look at the soluble
19 component. The particulate -- if you're looking at the
20 immediate toxic effects, the particulate component
21 obviously can settle out, and it can serve as a

1 reservoir for future toxicity problems.

2 The standard -- the Code of Maryland
3 estuarine standards are only for acute or immediate
4 toxicity problems.

5 Q So would that be the soluble component?

6 A The standard is only for total, but that's
7 because the designated method for measuring copper is
8 for measuring total copper.

9 Q As a whole, what are your conclusions, if
10 any, as to the summations or conclusions reached by Mr.
11 Klein in his report as to the storm water impact?

12 A All right. Dealing strictly with the copper
13 concentrations, and copper loadings, and potential
14 toxicity effects, the concentrations used were much too
15 high, were realistically much too high for the typical
16 storm water runoff from a system such as the Little
17 Magothy watershed.

18 The criteria used was also much too low. In
19 fact, it was too low. It was the incorrect criteria
20 for the type of system that we are discussing here.

21 And the calculation that was used did not

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1 take into effect the in-stream dilution, and the storm
2 water dilution that would be occurring.

3 These criteria are really more centered
4 towards point source discharges, and this is based on
5 the discussion, again, with the Maryland Department of
6 the Environment, where you're talking about a defined
7 source, and you're talking about the constant flow -- a
8 constant measurable flow, and you're talking about a
9 more constant concentration.

10 Storm water is not as predictable and
11 concentrations in storm water is not as predictable.

12 Q Changing the topic for you a little bit, were
13 you present during the testimony of the last witness?
14 I believe his name was Mr. Navecky.

15 A Yes, I was.

16 Q Now, did I recall you saying that you are
17 currently working for Mr. Elbrich in the Environmental
18 Division?

19 A Yes, I am.

20 Q And what contact do you have, if any, with
21 the water testing program that's within Mr. Elbrich's

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1 division?

2 A I'm the coordinator for that program, so I --
3 I manage and supervise the daily operations, and also
4 develop procedures, and protocols, and strategies for
5 the program.

6 Q Do you know what, if any, interaction there
7 is between the Little Magothy River and the Magothy
8 River?

9 A The Little Magothy River has no direct
10 connection to the Magothy River. It's -- in fact, it's
11 now direct -- interacts directly with the Chesapeake
12 Bay.

13 Q In your opinion, would you say that it is not
14 necessarily the case that what is true in the Magothy
15 River will also be true for the Little Magothy?

16 A Yes. Well, we're talking about two different
17 scales here.

18 The Magothy River is much larger than the
19 Little Magothy River, and there are a variety of other
20 physical characteristics that are not comparable
21 between the two systems.

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1 MS. BAER: I have no further questions for
2 Ms. Curtis at this time.

3 CHAIRPERSON HALE: Mr. Blumenthal?

4 MR. BLUMENTHAL: No questions.

5 CHAIRPERSON HALE: Mr. Murray?

6 CROSS-EXAMINATION

7 BY MR. MURRAY:

8 Q Ms. Curtis, you are an employee of Anne
9 Arundel County; is that right?

10 A Yes, I am.

11 Q You indicated that the -- in your opinion,
12 Mr. Klein's report, with respect to copper, overstates
13 the amount of copper likely to end up in the Little
14 Magothy, as a result of storm water runoff; is that
15 correct?

16 A Yes, it is.

17 Q Setting aside the specifics of
18 concentrations, or the volumes, or the measurements of
19 those, do you have an opinion as to whether there would
20 be more copper as a result of development of this
21 parcel, than there is in its present state?

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1 A In running the dilution calculations, there
2 was an indicated increase, but it was an incredibly
3 small increase.

4 And again, in evaluating what the copper --
5 the actual effects on the receiving stream would be, we
6 would have to do some analyses of what is actually
7 occurring in the Little Magothy River, to evaluate what
8 this additional copper would do to it.

9 Q Is there any scenario that you are familiar
10 with that would be good for it?

11 A The scenario for the Little -- the
12 improvement of the Little Magothy River would be the
13 same as for the rest of the Chesapeake Bay, but it's an
14 unworkable solution, and that would be to return the
15 watershed to a completely forested watershed.

16 Q Has it been your position that the Bay is too
17 far gone to deserve any protection?

18 A No, it is not. We certainly can, at least,
19 protect the existing water quality.

20 Q And with respect to the copper that's, as you
21 indicated, half soluble and half insoluble -- am I

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1 correct? Do I have that right?

2 A Yes.

3 Q The insoluble portion is something you also
4 referred to as the particulate component?

5 A Yes.

6 Q Now, does that ever dissolve, or does that
7 stay in a particulate form forever?

8 A As I mentioned earlier, the particulate
9 component does settle out, and it does provide a pool
10 of -- it does provide a pool which may solubilize
11 sometime in the future, under -- under future
12 conditions.

13 However, the water quality criteria for
14 estuarine waters in the state of Maryland is only for
15 acute toxicity, which is the immediate toxicity.

16 Q So you're saying that the problem that we
17 have to deal with here is not one, in any event, as far
18 as you're concerned, that would result in acute
19 toxicity in the Little Magothy; is that correct?

20 A I'm not sure I understand the question.

21 Q It is your opinion, as I think you've stated

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1 it here tonight, that whether by Mr. Klein's analysis,
2 or your own, we are not talking about acute toxicity
3 levels of copper, are we?

4 A If you're talking about in storm water
5 runoff, the technical data indicates that there would
6 be periodic exceedances of the recommended 2.9 -- the
7 6.1 micrograms per liter.

8 Q So periodically there would be toxic levels?

9 A In the storm water runoff. But then you
10 would also have to determine what the end stream
11 effects were in the Little Magothy River.

12 Q And in addition to the toxic effects, there
13 would be a buildup or a reservoir of the particulate
14 component; is that correct?

15 A Potentially. It may not settle out. It may
16 be carried farther out into the Little Magothy River.

17 One point is, we don't know what the current
18 copper concentrations are in the Little Magothy River.
19 And many of the tributaries to the Chesapeake Bay, the
20 current copper concentrations already exceed the water
21 quality standard.

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1 Q Even if that were true, does that, in your
2 opinion, indicate no reason to make some efforts to
3 further protect the Little Magothy from additional
4 copper loading?

5 A Prior to additional -- prior to evaluating
6 what the effects of the additional copper loadings
7 would be, I couldn't really say.

8 Q But --

9 A Again, looking at what the actual end stream
10 effects would be.

11 Q There are no scenarios, are there, in which
12 the "actual end stream effects" would be good for the
13 Little Magothy, are there?

14 A In terms of storm water runoff?

15 Q Yes.

16 A No.

17 Q So it's all just a matter of degree, how bad
18 is it?

19 A That's right. And I was basing my analysis
20 on the existing water quality criteria.

21 Q Which are, as you have testified, related to

1 acute toxicity?

2 A That's right.

3 MR. MURRAY: Thank you.

4 CHAIRPERSON HALE: Members of the Board?

5 BOARD MEMBERS: (No response.)

6 CHAIRPERSON HALE: Ms. Baer?

7 MS. BAER: Yes.

8 REDIRECT EXAMINATION

9 BY MS. BAER:

10 Q Ms. Curtis, did you prepare a report or
11 comments regarding Mr. Klein's report?

12 A Yes, I did, and I handed you a copy of them.

13 Q And does that summarize your testimony?

14 A Yes, it does. The comments center on those
15 three errors in the assessment of the water quality
16 criteria; the copper, the copper concentration used,
17 and the calculation method.

18 Q If you would help me pass a copy each to
19 counsel. I'm showing you a document entitled "Comments
20 on An Assessment to the Potential Environmental
21 Effects, Woods Landing 2, Storm Water Impact, Woods

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1 Landing 2," prepared by you. Do you recognize this
2 document?

3 A Yes, I do.

4 Q And is that the document that you have
5 prepared?

6 A Yes, it is.

7 MS. BAER: We would ask that that be marked
8 as County Exhibit 2.

9 CHAIRPERSON HALE: Is there any objection?

10 MR. MURRAY: No.

11 CHAIRPERSON HALE: And may I title that
12 "Curtis Report"?

13 MS. BAER: Certainly. And we have a number
14 of spares.

15 Mr. Murray, is there any objection?

16 MR. MURRAY: No.

17 CHAIRPERSON HALE: Mr. Blumenthal?

18 MR. BLUMENTHAL: No.

19 (Whereupon, the document was marked for
20 identification County's Exhibit No. 2 and received in
21 evidence.)

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1 BY MS. BAER:

2 Q One further question and that is, what is the
3 -- based on Mr. Klein's report, what do you -- do you
4 have an opinion as to what the quantity of copper
5 loading would be from this proposed development?

6 A I did do a calculation. However, I can't
7 remember the exact number at this time. I would have
8 to go back and check my notes.

9 And the reason I didn't notice that carefully
10 is because when I did the dilution ratio, I discovered
11 that the end stream effect would not be measurable.

12 Q And they would not be measurable for what
13 reason?

14 A Because the increase in copper concentrations
15 would be so small that we would not be able to detect
16 them by commonly-used methods of analysis.

17 MS. BAER: Thank you. I have no further
18 questions.

19 CHAIRPERSON HALE: Are there any further
20 questions for this witness?

21 Seeing none, you may be excused.

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(Whereupon, the witness was excused.)

MS. BAER: I call Mr. Pumphrey.

Whereupon,

LINTON PUMPHREY,

a witness, called for examination by counsel for the County, was duly sworn, and was examined and testified as follows:

CHAIRPERSON HALE: Please give us your name and address for the record and spell your last name.

THE WITNESS: Linton Carl Pumphrey. P-U-M-P-H-R-E-Y. You can reach me in care of the Department of Public Works, 1 Harry S. Truman Parkway, Annapolis, Maryland 21041.

DIRECT EXAMINATION

BY MS. BAER:

Q Mr. Pumphrey, how are you currently employed?

A I am Chief of Development Services for the Department of Public Works for Anne Arundel County.

Q And what is your educational background?

A I have a Bachelor's of Science in -- from Johns Hopkins University. I have a -- I'm registered

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1 in the state of Maryland as a professional engineer.

2 Q And have you testified before this Board in
3 the capacity of an expert?

4 A Yes, I have.

5 Q And what is the field of your expertise?
6 What phase of engineering?

7 A It's civil engineering. Primarily my
8 division deals with storm drainage, storm water
9 management, and road design for development projects in
10 Anne Arundel County.

11 MS. BAER: We would offer Mr. Pumphrey as an
12 expert on -- as a registered professional engineer and
13 expert in storm water management.

14 CHAIRPERSON HALE: Any objection?

15 MR. MURRAY: No.

16 MR. BLUMENTHAL: (Shakes head negatively.)

17 CHAIRPERSON HALE: He is recognized. Go
18 ahead, counsel.

19 BY MS. BAER:

20 Q Mr. Pumphrey, are you familiar with the storm
21 water aspects of the proposed Woods Landing 2

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1 development?

2 A Yes, I am.

3 Q And under the Code, what storm water
4 management law or requirements are applicable to this
5 subdivision?

6 A It's what we call old Bill 16-77, which would
7 be the -- the old peak management law that was passed
8 in 1977.

9 Q And what are the requirements for this
10 subdivision under that old bill?

11 A Under the old storm water management law,
12 since it was a peak management, and it had a tidal
13 discharge, there was no requirements for storm water
14 management. It was exempt.

15 Q And is it, under the law, exempt to this
16 date?

17 A As far as I know, as determined by the Office
18 of Planning and Zoning for their evaluation of the
19 subdivision, yes.

20 Q And is that evaluation by the Office of
21 Planning and Zoning done as a result of the Chesapeake

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1 Bay critical area law that we generally refer to as 49-
2 88?

3 A Yes, it is.

4 Q And as a result of your communications with
5 the Office of Planning and Zoning, did you -- even
6 though this property was exempt generally from storm
7 water management, impose storm water management
8 requirements on the project?

9 A We didn't. But it was our understanding that
10 the Department of Natural Resources, in order to get a
11 discharge permit, would be requiring water quality, so
12 we did review, under the grading plans presented by the
13 engineer, review water quality storm water management
14 for this site.

15 Q And what did you include in your review?

16 A Would you repeat that?

17 Q Sure. What things were you looking for when
18 you did your review?

19 A Well, we looked at the designs of the various
20 systems, and the soils report presented by the
21 engineer. The soils report done by a local

1 geotechnical engineer indicated certain types of soils
2 that had certain types of infiltration. They met the
3 minimum clearance for -- for the ground water, as
4 predicted by the geotechnical engineer.

5 We did have, I believe it is, three areas
6 where we couldn't do infiltration, due to soils, or
7 ground water, or whatever, and we went through our
8 scenario of infiltration, attenuation, retention,
9 detention, and we came to our last resort, which is a
10 system of -- that we call attenuation devices, which is
11 a system of providing an under drain system within a
12 standard design infiltration type trench. But since it
13 doesn't infiltrate to the degree acceptable, a gravity
14 discharge is provided for those systems.

15 Q Now, you indicated that you, in your review,
16 used a report by a local geotechnical engineer. Who
17 was that engineer?

18 A It was Hardin and Kight.

19 Q And is he, to the best of your knowledge, a
20 registered professional engineer in the state of
21 Maryland?

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1 A Jack Hardin is, and I think Steve Kight is
2 also.

3 Q In your review of the storm water proposal,
4 or storm water aspect of the proposed Woods Landing 2
5 development, did it meet all the criteria necessary for
6 your office?

7 A Yes, it did.

8 Q And did you find it lacking in any respect?

9 A No, we didn't, or else we wouldn't have
10 approved it.

11 MS. BAER: I have no further questions of Mr.
12 Pumphrey at this time.

13 CHAIRPERSON HALE: Mr. Blumenthal?

14 MR. BLUMENTHAL: I have no questions,
15 although the temptation is great. I've never had Mr.
16 Pumphrey under oath previous to today.

17 (Laughter.)

18 CHAIRPERSON HALE: Mr. Murray?

19 CROSS-EXAMINATION

20 BY MR. MURRAY:

21 Q Mr. Pumphrey, you indicated that in your

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1 opinion the law that pertains to storm water management
2 for this particular project is something called the
3 1977 Peak Management Law; is that correct?

4 A Yes. Bill 16-77.

5 Q And that, as you understand that law, there
6 is no storm water management regulation that pertains
7 to the project?

8 A Right. You get to that law via the Critical
9 Areas Law in that -- this job was frozen in time, as we
10 call it, in that it was on the allocation list.

11 Q Now, I understand you've been qualified here
12 today as an engineer. Are you also qualified in the
13 field of law?

14 A No, I'm not. I'm just telling you how we
15 interpret it.

16 Q And you were instructed by, as I understand
17 it, the Department of Planning and Zoning to treat this
18 project as if it were so exempt?

19 A That is how we handle -- as you may or may
20 not know, Anne Arundel County has two primary agencies
21 when it comes to development.

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1 The lead agency for development is the Office
2 of Planning and Zoning. They tell us how to treat all
3 of the subdivisions and what status it has, if any.

4 Q And just to clarify a point, you indicated
5 that in your -- in your review of the project, you
6 found that the device called an attenuation device --

7 A Yes.

8 Q -- needed to be used as a last resort, with a
9 gravity discharge?

10 A Yes.

11 Q Now, why is that, exactly, a last resort?

12 A Well, it's a last resort because if you
13 review the Green Book -- I guess a better name would be
14 the six to 12 hour extended detention device. It
15 probably has a 15 to 20 percent pollutant removal rate,
16 in accordance with -- I mean the Blue Book, which is
17 the ten percent rule.

18 Q And would you explain that ten percent rule,
19 please?

20 A The ten percent rule is a requirement -- the
21 critical areas, put out by DNR.

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1 Q But that is, as I understand it, not
2 applicable, based on the instructions you got from
3 Planning and Zoning in this case?

4 A That is correct.

5 Q So the approvals that your office gave were
6 based upon the guidance you received that the project
7 did not require compliance with the critical areas
8 program; is that correct?

9 A That is correct.

10 MR. MURRAY: Thank you. No other questions.

11 CHAIRPERSON HALE: Ms. Baer, any further
12 questions of this witness?

13 MS. BAER: I do. I was just kind of taking
14 aback. Usually you poll the Board first.

15 CHAIRPERSON HALE: Members of the Board, do
16 you have any questions?

17 BOARD MEMBERS: (No response.)

18 REDIRECT EXAMINATION

19 BY MS. BAER:

20 Q Mr. Pumphrey, it's your understanding that
21 the storm water management was reviewed for this

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1 project with compliance to the critical areas, insofar
2 as possible?

3 A That is correct and that water quality was
4 provided for half inch runoff from impervious surfaces.

5 Q And, in fact, is that how you reviewed the
6 submission that you received?

7 A That is how we -- that's how we ended up
8 reviewing it, yes.

9 Q And had it not been for the critical area
10 component, would this have received any storm water
11 management review at all?

12 A It would not have, other than, as I said, we
13 believe it could have gotten to it by tidal outfall.

14 Q And would that have been essentially the same
15 review as Woods Landing, Section 1?

16 A Uh-huh.

17 Q The first part of this development. Are you
18 familiar with that?

19 A Yes. I am familiar with that. We didn't do
20 anything there because it was -- a transitional
21 detention, as I recall.

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1 MS. BAER: I have no further questions.

2 CHAIRPERSON HALE: Any further questions?

3 MR. MURRAY: That raises another question in
4 my mind.

5 RE CROSS EXAMINATION

6 BY MR. MURRAY:

7 Q Mr. Pumphrey, the -- you indicated just now
8 that you did review the storm water management plan for
9 water quality?

10 A Yes.

11 Q Are you saying that the water quality of this
12 project, after it is built out, will be equal to or
13 better than its present condition?

14 A No, sir.

15 Q And is it going to improve the water quality
16 of the storm water -- of the storm water that runs off
17 there by ten percent?

18 A No, it isn't.

19 MR. MURRAY: Thank you.

20 CHAIRPERSON HALE: Any further questions for
21 this witness?

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1 Seeing none, you may be excused.

2 (Whereupon, the witness was excused.)

3 MS. BAER: I call Ms. Chalkley.

4 Whereupon,

5 PENELOPE CHALKLEY,

6 a witness, called for examination by counsel for the
7 County, was duly sworn, and was examined and testified
8 as follows:

9 CHAIRPERSON HALE: Have you signed the
10 witness list?

11 MR. MURRAY: Madam Chairman, may I ask a
12 procedural question, as we are getting started here.
13 We have some witness scheduling issues. Other people
14 are interested in speaking tonight, I'm told. Can you
15 tell me what the plan of the Board is with respect to
16 the hour they intend to go?

17 CHAIRPERSON HALE: We will try to finish
18 tonight's hearing by 9:30.

19 MR. MURRAY: Thank you.

20 CHAIRPERSON HALE: Give us your name and
21 address for the record and spell your last name.

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1 THE WITNESS: It's Penelope Chalkley, and I
2 am with the Office of Planning and Zoning, 2664 Riva
3 Road, Annapolis 21401. My last name is spelled C-H-A-
4 L-K-L-E-Y.

5 DIRECT EXAMINATION

6 BY MS. BAER:

7 Q Ms. Chalkley, what is your current job
8 assignment?

9 A I'm an environmental planner in the
10 Environmental Division.

11 Q And have you been previously accepted as an
12 expert before this Board?

13 A Yes, I have.

14 Q And how long have you been with the
15 Environmental Division?

16 A Since -- well, it wasn't originally the
17 Environmental Division. But I've been with Planning
18 and Zoning since 1976.

19 Q And has your emphasis been on environmental
20 concerns?

21 A Yes, it has.

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1 MS. BAER: I can go into Ms. Chalkley's
2 credentials further, but I believe the Board knows her,
3 and I would offer her at this point as an expert so we
4 can get on with the testimony.

5 CHAIRPERSON HALE: Any objection?

6 MR. MURRAY: I'm not sure what exactly the
7 area is that she's been offered as an expert in.

8 MS. BAER: In environmental issues, to
9 include project review and approval through the Office
10 of Planning and Zoning.

11 MR. MURRAY: County procedures and practices?

12 MS. BAER: That's correct.

13 MR. MURRAY: No objection.

14 MR. BLUMENTHAL: No objection.

15 CHAIRPERSON HALE: We will receive her as an
16 expert in county procedures and project review and
17 approval.

18 MS. BAER: In the -- for environmental
19 considerations.

20 CHAIRPERSON HALE: For environmental
21 considerations.

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1 BY MS. BAER:

2 Q Ms. Chalkley, are you familiar with the
3 proposed Woods Landing 2 construction?

4 A Yes. Yes, I am.

5 Q And did you have an opportunity to review the
6 Woods Landing 2 proposal, in the course of your normal
7 duties?

8 A Yes, I did.

9 Q And what kind of review was made of this
10 project?

11 A This was a project that came back essentially
12 as a revised final once the sewer allocation was
13 available.

14 Prior to submitting a further revised final,
15 it was determined that the projects that were on the
16 sewer allocation list should be reviewed for compliance
17 with the critical area criteria, insofar as possible.

18 So they submitted a critical area report and
19 revised final plan to address some of these issues in
20 1991. November.

21 Q When you say "insofar as possible," why is

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1 the insofar-as-possible test applicable here?

2 A Because our office, as a matter of policy,
3 required it.

4 Q Now, did there come a time when your office
5 approved or reviewed for approval the critical area
6 report?

7 A Yes.

8 Q And did you find that critical area report to
9 be satisfactory in giving you all the information that
10 you had requested?

11 A Initially, they had omitted a description of
12 a nontidal wetlands. They had submitted that as an
13 addendum. During the course of the review, which was
14 the project, as well as the critical area report, we
15 made comments through the review process, and through
16 several turnarounds, these were addressed.

17 Q Did there come a time when your office
18 approved the critical area report or -- let me rephrase
19 that.

20 Did there come a time when the critical area
21 report addressed all of the questions that you put

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1 forth to the developer?

2 A Either the critical area report or the
3 developer's engineer, yes.

4 Q Now, if this project were being brought to
5 full compliance, instead of the insofar-as-possible
6 test, what would be different as to the -- as to the
7 addressing of nontidal wetlands, if you know? What is
8 required for full compliance with the critical area
9 report for a new project? What do you have to do, if
10 anything? What consideration is taken for nontidal
11 wetlands?

12 A You would have a 25 foot buffer. You would
13 leave the wetlands alone. They did that with this
14 project.

15 Q And was, in fact, there a buffer provided for
16 the wetlands?

17 A Yes.

18 Q And would you address steep slopes in your
19 review?

20 A Yes.

21 Q And was there any protection or mitigation

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1 regarding steep slopes in this plan?

2 A From -- I guess I could say that with this
3 revision, they essentially moved the development off
4 the steep slopes, which the original submittal had
5 units and disturbance right on the steep slopes.

6 Q And is there any buffer provided for the
7 steep slopes?

8 A It varies. Yes.

9 Can I go back just to the issue of the
10 buffer?

11 Q Sure.

12 A For the wetlands -- there is one outfall in a
13 nontidal wetland. Not in the nontidal wetland, but in
14 the buffer to the nontidal wetland.

15 Q Now, are there some areas in which this plan
16 did not comply 100 percent with the current law, but
17 has passed the insofar-as-possible criteria that your
18 office utilizes? And I'm drawing your attention to
19 impervious coverage.

20 A They exceed the impervious coverage with this
21 revision.

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1 Q And was any adjustment made for impervious
2 coverage, during the course of your negotiations, or
3 your dealings with the developer?

4 A I believe they tightened the whole
5 development up, in that they drew units off of steep
6 slopes, and tightened it up. That would reduce road
7 layouts, parking off those roads.

8 Q And were you here previously when Mr.
9 Pumphrey testified?

10 A Yes, I was.

11 Q Are you, or someone in your office, the
12 authority from Planning and Zoning that would
13 communicate to Mr. Pumphrey the storm water management
14 review criteria, what Mr. Pumphrey should be looking
15 for in his review?

16 A Well, for projects that are designated in the
17 critical area mapping as areas of limited development,
18 we generally try to get water quality and peak
19 management. And working with the Critical Area
20 Commission, there is an ability to seek a waiver, if
21 justified, to peak management.

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1 Q To the best of your knowledge, did this
2 proposed Woods Landing 2 meet all of the criteria,
3 insofar as possible, for the Office of Planning and
4 Zoning, and satisfy the questions on the critical area
5 report?

6 A Yes.

7 Q And did there come a time when your office
8 approved the proposed Woods Landing 2 for environmental
9 concerns?

10 A Yes.

11 MS. BAER: I have no further questions for
12 the witness at this time.

13 CHAIRPERSON HALE: Mr. Blumenthal?

14 MR. BLUMENTHAL: I'd like to inquire of Ms.
15 Baer before I ask questions. Will there be another
16 witness from the county dealing with the sequencing of
17 county legislation, applicable to Woods Landing 2?

18 MS. BAER: Yes. Yes.

19 MR. BLUMENTHAL: All right. Then I would
20 just limit my questions of Ms. Chalkley.

21 .

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CROSS-EXAMINATION

BY MR. BLUMENTHAL:

Q You mentioned that for the processing of this -- the first point you mentioned is this subdivision was on the sewer allocation list, or something akin to that.

A That's correct. For Broadneck.

Q And what does that mean?

A That means that the project had been submitted and reviewed for sketch, and at the time preliminary and final had all the necessary approvals, had met all the conditions imposed by the various regulations, but because there was insufficient sewer capacity, was not allowed to proceed to record plat by signature.

Q If you know, was this at a time prior to the sewer allocation program now in effect in Anne Arundel County?

A It was placed on the list probably in '84 or '85. Something like that.

Q Now, you mentioned that your office adopted a

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1 insofar-as-possible test for this subdivision, as a
2 matter of policy.

3 A That's correct.

4 Q To your knowledge, has Anne Arundel County
5 adopted any legislation that would require this
6 subdivision to meet the critical area legislation
7 insofar as possible?

8 A No. In fact, the only legislation that we
9 adopted was to exempt it.

10 Q So you're saying that the legislation totally
11 exempts the subdivision from critical area
12 considerations?

13 A That's correct.

14 Q That notwithstanding, your office
15 superimposed on this developer, and this development, a
16 higher quality of compliance with the critical areas
17 legislation?

18 A That's correct.

19 MR. BLUMENTHAL: No further questions.

20 CHAIRPERSON HALE: Mr. Murray.

21

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CROSS-EXAMINATION

BY MR. MURRAY:

Q Ms. Chalkley, you indicated that when this project had sewer become available to it, that it then required a revised final plan; is that correct?

A We made them revise it to reflect our policy of insofar as possible, which meant they had to redo the layout, redo the parking spaces, do storm water management, account for clearing, staying off of slopes, what they were going to do with the shoreline, and that kind of thing. They also had not identified wetlands prior to this.

Q What exactly evidences the final approval that the project received?

A You probably have to ask somebody in the subdivision section that.

Q So you're not aware of anything evidencing final approval?

A There is a record plat, if that's what you're asking about.

Q In this particular case, and the record

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1 reveals it, this project received final approval on
2 December 31, 1991. Are you familiar with that?

3 A Yes. The date is on the plat. Yes. I
4 wasn't there.

5 Q What I would like to do is take you back in
6 time and ask you when the prior final approval was
7 obtained.

8 A I don't know.

9 Q Who would know?

10 CHAIRPERSON HALE: I'm sorry. You cannot
11 help the witness.

12 THE WITNESS: Okay. The subdivision section.

13 BY MR. MURRAY:

14 Q But you've never seen such documentation?

15 A I have not reviewed the files from the
16 previous subdivision submittals that placed that
17 particular section on the sewer allocation list.

18 Q Who did?

19 A Can I ask you a question to clarify it?

20 CHAIRPERSON HALE: No. If you don't know the
21 answer to the question, you may say you don't know.

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1 THE WITNESS: I'm not quite sure whether he
2 is asking about the submittals prior to its being
3 placed on the sewer allocation list, or if he's asking
4 another type of question.

5 CHAIRPERSON HALE: If you don't know the
6 answer, you can say you don't know.

7 THE WITNESS: I don't know.

8 MR. MURRAY: Let me clarify the question
9 then.

10 BY MR. MURRAY:

11 Q You testified earlier, and I wrote down that
12 you did, that there came a time when you, or someone
13 you worked for, or with, determined that this project
14 needed a "revised final."

15 A That's correct. Because it -- the plat that
16 got signed is not what was originally submitted. So,
17 therefore, there would have been a revised final.

18 Q And what my question is, is where is the
19 first final?

20 A In the subdivision file.

21 Q But you haven't seen it?

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1 A I haven't seen it, except back in '83 or '84,
2 there was some cursory review.

3 Q By you?

4 A Yes.

5 Q And the cursory review was of the project, or
6 of the file, or both?

7 A It was of the project.

8 Q And were you in a position at that time to
9 have granted the project final approval?

10 A I would not have been the person to grant it
11 final approval.

12 Q Who would?

13 A I don't know.

14 Q Now in this case the development contemplates
15 the construction of some townhomes; is that correct?

16 A That's correct.

17 Q And to do that a building permit would be
18 required?

19 A That is correct.

20 Q And has a building permit been issued?

21 A I don't know.

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1 Q Is a building permit -- strike that.

2 Does a building permit, in the first
3 instance, require the approval of the planning officer?

4 A My understanding is that an application is
5 made through the Permit Application Center, various
6 agencies review it. Once all the agencies that are
7 reviewing it approve it, a permit is issued.

8 Q I'm showing you a document. Do you recognize
9 that?

10 A Yes, I do.

11 Q And that is?

12 A The Critical Area Program, Anne Arundel
13 County, Maryland.

14 Q I've opened the book to the section entitled
15 "grandfathering." Are you familiar with that?

16 A I have read it in the past.

17 Q Would you read the first sentence of this
18 paragraph.

19 A "Building permit applications submitted after
20 adoption of the county's critical area program for a
21 development that has not been approved, in compliance

1 with the criteria, will be revised to comply with
2 adopted requirements, insofar as possible."

3 Q Now, is it possible for this project then to
4 be developed in accordance with the Anne Arundel County
5 Critical Area Program, without meeting the insofar-as-
6 possible standard?

7 MR. BLUMENTHAL: Objection to the question.
8 The initial question was to building permits. Are we
9 following a different -- I withdraw the objection. I
10 understand the question.

11 THE WITNESS: You're asking can we go ahead
12 and get a building permit without meeting the critical
13 area criteria.

14 Our Bill 49-88, on which all that information
15 is based, specifically exempts projects -- I mean, it
16 specifically exempts it because it is on the sewer
17 allocation list. It's the same with Woods Landing.

18 BY MR. MURRAY:

19 Q You're saying Bill 49-88 overrides the
20 requirement that you just read?

21 A Yes. Because Bill 49-88 is the legislation

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1 that's a summary of our program, the legislation, and
2 various other things.

3 Q Well, what other things are intended to be
4 covered then by the sentence you just read that talks
5 about developments that have not been approved in
6 compliance with the criteria?

7 A It would be plats, lots, or parcels created
8 prior to the critical area, that were not reviewed
9 under the critical area regulations, or which were not
10 exempted by the critical area regulations. When I say
11 "critical area regulations," I'm talking about the
12 county program.

13 Q Now, those sorts of things are also described
14 in the initial paragraphs under the grandfathering
15 section, are they not?

16 A I'd have to read it.

17 (Perusing document.)

18 Well, for instance, if you look at the
19 sentence down here about major subdivisions/minor
20 subdivisions, rezoning, et cetera, which were submitted
21 before April 26th, 1986, are exempt. If you look at

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1 Bill 42-86, it specifically says "sketches." So that
2 -- I guess you go back to Bill 42-86, specifically
3 exempts the projects that were submitted as sketches
4 prior to that.

5 Q Yes. And then the same paragraph goes on and
6 says, minor subdivisions are also exempted if the
7 submittals were before a certain date; right?

8 A Right.

9 Q And then it goes on and says that
10 subdivisions on the sewer allocation list have also
11 been grandfathered; right?

12 A Right.

13 Q So all those things in the first paragraph
14 are exempted under one scenario or another; right?

15 A That's correct.

16 Q And then the next paragraph says, "Building
17 permit applications submitted after adoption of the
18 program, for developments not approved in compliance
19 with the criteria, will be reviewed to comply with the
20 requirements, insofar as possible."

21 And do I understand you to say that you do

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1 not read that sentence as modifying the first
2 paragraph?

3 MR. BLUMENTHAL: Objection at this time.
4 I've finally focused on what it was that I was
5 concerned with.

6 What is before this Board are not building
7 permits. Building permits do not come until a
8 subdivision is approved. I'm not here to address
9 whether a building permit, should the subdivision stand
10 as approved, be granted or not granted. That's the
11 next step in the administrative procedure to construct
12 on this property.

13 The only matter before this Board is whether
14 or not the subdivision has been properly granted by
15 Anne Arundel County. Whether Anne Arundel County yet
16 grants building permits, and does so appropriately, is
17 another matter for another day.

18 CHAIRPERSON HALE: Mr. Murray?

19 MR. MURRAY: The witness testified that she
20 understood the policy of the planning department to be
21 that -- strike that. That there was no requirement

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1 that the planning department apply the insofar-as-
2 possible standard to any development that was on the
3 sewer allocation list.

4 And what I'm trying to do is find out whether
5 there is any limitation to that policy, or whether it
6 is as broad as it was earlier testified to be.

7 CHAIRPERSON HALE: Ms. Baer.

8 MS. BAER: Madam Chairman, I believe the
9 testimony that Ms. Chalkley offered to the Board was
10 that the law did not require this project to be
11 reviewed, since it was exempt under Bill 49-88.

12 However, by policy, the subdivision was
13 reviewed to the standard we call "insofar as possible."

14 And in response to Mr. Blumenthal's question,
15 she indicated that this was held then to a higher
16 standard than what the law required, as a result of
17 this internal policy. I don't believe that counsel's
18 question accurately reflects her previous testimony.

19 CHAIRPERSON HALE: Ms. Chalkley has testified
20 that there is no law which requires this project to
21 meet critical areas law. Mr. Murray is questioning

1 whether there is any law that allows this project. So
2 we're going to allow him to continue with that line of
3 questioning.

4 BY MR. MURRAY:

5 Q Ms. Chalkley, in accordance with your own
6 understanding of county practice, and procedure, and
7 policy, is there any requirement for this project to be
8 built in accordance with the insofar-as-possible
9 standard?

10 A Not for a subdivision review.

11 Q What about building permit?

12 A I don't review building permits. I can't
13 answer that question.

14 Q I'm presently looking at the Anne Arundel
15 County zoning regulations. Now, would they contain the
16 law that you are citing as exempting this property from
17 critical area review?

18 A The exemption is -- the critical area law
19 bill, it's at the end of the bill. I'm not sure what
20 the code reference is.

21 Q You can't necessarily put your hands on the

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1 authority that you're relying on?

2 A If you give me a copy of the bill, I can show
3 you where it is. But also if you give me a copy of 42-
4 86, I can show you where it is exempt.

5 We don't have all the codified materials,
6 though. I usually use a copy of the bill as it is
7 approved by the County Council, which includes grading,
8 subdivision, zoning -- plus some of the policy
9 decisions and the other things --

10 MS. BAER: Madam Chairman, perhaps I could be
11 of assistance. I have a copy of Bill 49-88. Perhaps
12 if counsel doesn't object, she can refer to that.

13 MR. MURRAY: Not at all.

14 THE WITNESS: All right. In Bill --

15 MS. BAER: I stand corrected. It's Mr.
16 Elbrich's copy. He says he wants it back.

17 CHAIRPERSON HALE: We will note that.

18 THE WITNESS: Well, I see it's under Section
19 3, but exactly where that goes back, I don't know.

20 MR. BLUMENTHAL: Ms. Chalkley, would you
21 refer to page -- if I might help -- 75.

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1 THE WITNESS: Yes. Page 75. Section 3,
2 number four, in parenthesis.

3 And in Bill 42-86, under Section 3 -- excuse
4 me -- yes, under Section 3, where it says, "Be it
5 further noted that the restrictions in Sections 1 and
6 Section 2, which have to do with subdivision, apply to
7 all applications for sketch plan approval, and minor
8 subdivisions and conveyances of more than two lots
9 submitted and accepted on or after April 21st, 1986."
10 And the Woods Landing sketch for Woods Landing 2 was
11 submitted and accepted in 1983.

12 BY MR. MURRAY:

13 Q What you're saying is that the planning
14 office interprets Section 3, Sub 4, as a blanket
15 exemption from all critical area requirements; is that
16 correct?

17 MS. BAER: I object to that because it seems
18 to me that there is no interpretation needed, that the
19 language speaks for itself. Either you believe it or
20 you don't believe it.

21 MR. MURRAY: The witness is testifying about

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1 the policy, the practice, the procedures, and I'm
2 simply trying to elucidate the reason and basis for
3 those opinions.

4 CHAIRPERSON HALE: She has testified. You
5 may proceed.

6 BY MR. MURRAY:

7 Q Do you remember the question?

8 A If you would repeat it, I would appreciate
9 it.

10 Q Sure. I'm trying to verify that, as you
11 understand it, the planning office's policy that this
12 development is exempt from all critical area
13 requirements is based on Section 3, Sub 4, of Bill 49-
14 88.

15 A It's my understanding that the subdivision is
16 exempt based on that because it refers to -- you know,
17 because it refers to Bill 42-86, which also exempted
18 it.

19 Q And what does 42-86 do?

20 A That says that the restrictions for
21 subdivision of land applies to all the applications for

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1 sketch plan approvals that were submitted after April
2 of 1986.

3 Q And is this such a project?

4 A The sketch was submitted in 1983.

5 Q But we, again, just to go back to the point a
6 minute ago, we don't know when or how any prior final
7 approval was given; is that correct?

8 MR. BLUMENTHAL: Objection. There is no
9 testimony that prior final approval needed to be given.
10 Or is it just a question --

11 MR. MURRAY: This witness testified under
12 direct that the planning department required this
13 development to receive revised final approval. It
14 seems to me that those words --

15 MR. BLUMENTHAL: Yes.

16 MR. MURRAY: -- implicitly require --

17 MR. BLUMENTHAL: I withdraw the objection.

18 THE WITNESS: Would you repeat the question
19 again?

20 BY MR. MURRAY:

21 Q You have pointed out now that the policy --

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1 the premises for the policy that critical area
2 compliance is not required is in 49-88 and 42-86;
3 correct?

4 A Right.

5 Q And that getting on the sewer allocation list
6 contemplated -- contemplates specifically some prior
7 approval. Is that correct?

8 A Yes.

9 Q And you don't know where, when, or how that
10 prior approval occurred?

11 A No. That's best answered by the subdivision
12 section.

13 Q Now, in the course of your work on this
14 particular project, at any time did the developer offer
15 any lower density for this project?

16 A I did not review for density.

17 Q Well, the question I asked you really wasn't
18 limited to what you reviewed. It's broad enough to
19 contemplate what you knew.

20 A I didn't know the -- I didn't review the
21 original number of units, so I don't know whether he

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1 lowered the number or not.

2 Q All right. My question to you, to clarify
3 it, is at any time that you were involved did you
4 discuss with the developer, or the developer, or its
5 representatives with you, a lower density than the
6 density which is shown on the plats, which are the
7 subject of this appeal?

8 A We didn't -- I don't remember specifically
9 discussing lower density. There was some discussion
10 about eliminating some units to reduce clearing, or to
11 move further back from the slopes.

12 Q But, as far as you can recall, that didn't
13 result in any reduction in density?

14 A Not down to the critical area criteria level,
15 no.

16 Q What about just down at all?

17 A I don't know.

18 Q What is the critical area density criteria
19 for this type of land?

20 A For LDA, it's 3.99 units per acre is what we
21 use.

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1 Q And what's the density of the project?

2 A I'd have to look at the plat.

3 Q Please do.

4 A If I -- could I get a calculator?

5 (Whereupon, there was a discussion off
6 the record.)

7 THE WITNESS: It's about five units per acre.

8 BY MR. MURRAY:

9 Q So setting aside maybe some decimal points,
10 it's about one unit per acre greater than the critical
11 area density, which you said was 3.99?

12 A Yes.

13 Q And there are how many acres in the property?

14 A The total acreage is 31.16.

15 Q And assuming approximately one per acre, that
16 means there is about 31 units greater than critical
17 areas would permit?

18 A They have 153 cluster lots.

19 Q Now, under the critical area program, what if
20 any limitations would be placed on deforestation?

21 A It this project were subject to complete

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1 compliance or insofar as possible?

2 Q Let's begin with complete compliance.

3 A The law says you can clear 20 percent of the
4 woodland. With the permission, or approval of the
5 Office of Planning and Zoning, you can go up to 30
6 percent, and then the replacements are equal area if
7 it's 20 percent or less, and one and a half times once
8 you go over the 20 percent, but that goes back to the
9 first square foot.

10 Q And what is the policy that -- applied by the
11 planning office regarding the insofar-as-possible
12 context for deforestation?

13 A Our policy has been if you do not mass grade,
14 and you clear without regard to percentages, and you
15 reforest on an equal area basis, or at \$.40 a square
16 foot.

17 Q That first sentence you said, something about
18 misgrade or mess grade?

19 A Mass grade.

20 Q What does that mean?

21 A That means if you don't cut down every single

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1 tree, or you make an attempt to keep some.

2 Q Then in this case, what is the deforestation
3 percent?

4 A When they initially submitted, it was 53
5 percent. Right now I don't remember what the
6 percentage was.

7 Q But at one time you did know?

8 A When it came in. And it was a revised final.
9 It was listed at 53 percent, and that sticks in my
10 mind. I am not sure what the latest percentage is, and
11 whether it has gone up or down.

12 Q What would be the critical area requirement
13 regarding impervious surface?

14 A If it were complete compliance, it would be
15 15 percent for this site.

16 Q And what's the policy for insofar as
17 possible?

18 A That, too, we have been reviewing in terms of
19 the project as it was originally reviewed or platted.
20 Where the lots are less than half an acre, we were
21 using 25 percent. But since this project was not

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1 subject, there was no cap then placed on this.

2 Q Do you know what the impervious surface on
3 this project is?

4 A At one time I think it was like 30 acres.

5 Q And that's --

6 A Twenty-five percent. What it came in as
7 final with the revised final.

8 Q I'm sorry. Say that again.

9 A The revised final, it was listed as 25
10 percent.

11 Q Who did that calculation?

12 A McCarthy and Associates, the environmental
13 consultant for the applicant.

14 Q Did you double check that figure?

15 A No, I did not.

16 Q And what would be the critical area
17 requirement for the buffer?

18 A If it were complete compliance, it would be a
19 minimum 100 foot buffer from land -- tidal wetlands,
20 and from the shoreline. It would be a 25 foot buffer
21 to nontidal wetlands. You would be looking at

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1 expanding the buffer to include all slopes of 15
2 percent or greater. If those were contiguous to the
3 wetlands or the shoreline, there would be an additional
4 50 foot setback from the top of that slope. We would
5 also ask the consultant to check for highly erodible
6 soils, and if those were all contiguous, they would be
7 factored in.

8 Q In this case, what is the actual buffer from
9 the tidal wetlands?

10 A It's generally around 50 feet. Some places,
11 it's more.

12 Q And is there a buffer established for the
13 steep slopes?

14 A Minimum buffer.

15 Q Five feet?

16 A Can I look at the plan?

17 Q Please.

18 A Well, if you're looking at the 15 percent or
19 greater slope, it varies from virtually nothing to
20 maybe 25 feet.

21 Q And I think you testified earlier that under

1 the critical areas criteria there would be some
2 limitation on placing a storm water outfall in the
3 buffer area?

4 A Well, right -- there was an actual outfall in
5 the buffer. Generally that's acceptable because you
6 have to get storm water to the lowest point. You don't
7 want it discharging up on the slope, where it can cause
8 erosion. And in some cases an appropriate point might
9 be in the buffer, as opposed to in the wetlands itself.

10 Q Now, would that sort of a result require a
11 variance?

12 A If this were a project subject to complete
13 compliance, they would probably have to get a variance
14 to disturb the steep slopes, but not the buffer.

15 Q Did you get, anywhere during the approval or
16 the review process that you were involved in, any
17 proposals from the developer to develop this project in
18 a way that had less impervious surface than the one
19 which is the subject of the appeal?

20 A I don't believe so.

21 Q Did you request any?

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1 A Specifically, I don't believe so.

2 Q Did you receive any, or did you -- strike
3 that.

4 At any time during your review of the
5 project, did the developer propose or offer any plans
6 which would have complied with the entire 100 foot
7 buffer?

8 A Not that I remember seeing.

9 Q Did you request one?

10 A No.

11 Q The insofar-as-possible policy that we're
12 discussing, where did that come from?

13 A The legislation. Bill 49-88.

14 Q Is that concept defined in there?

15 A Is there a definition of it? No.

16 Q Do you have a policy, guidance, or anything
17 like that, internal, that gives it any definition?

18 A You mean written?

19 Q Yes.

20 A No.

21 Q How about something unwritten?

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1 A It is done on a case-by-case basis. We try
2 to be consistent.

3 Q Are you the individual who applies that
4 policy, in an effort to be consistent?

5 A I'm probably, in this case, the lead person
6 for this particular project, but I wasn't the only
7 person reviewing it. I had input from other people.

8 Q Were those other people ones who gave you
9 direction as to what should be interpreted to be the
10 application of the insofar-as-possible standard?

11 A Since it went on over time, I would say it
12 was a give-and-take thing -- we talked about these --
13 we came up with a compromise.

14 Q By "compromise," was this a compromise among
15 the staff, or a compromise with the developer?

16 A Both.

17 Q Did you, at any time yourself, ever consider
18 whether this project could be made to comply to a
19 greater degree than approved with the critical area
20 criteria?

21 A I might have considered it, but considering

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1 it was exempt under our regulations, there was nothing
2 more to be considered.

3 Q So is it reasonable then to say that in
4 reviewing the project you had two considerations,
5 exemption on the one hand, and insofar as possible on
6 the other hand?

7 A That's fair.

8 Q Is the -- in your opinion, is the project, as
9 approved, does it comply with the critical area
10 criteria, insofar as possible?

11 A No. It's an interpretation as to what
12 insofar as possible means, so for one person it may --
13 another person, it may not.

14 Q When you're talking about possibilities,
15 though, it is possible, isn't it, that the project --
16 that there could be a townhouse development on this
17 property with lower density?

18 A It's possible.

19 Q And less deforestation?

20 A It's possible.

21 Q And less impervious surface?

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1 A It's possible.

2 Q And to comply with the buffer?

3 A Yes.

4 MR. MURRAY: Thank you, ma'am.

5 CHAIRPERSON HALE: Members of the Board? Any
6 questions from members of the Board? Mr. Deuringer.

7 EXAMINATION BY THE BOARD

8 BY MR. DEURINGER:

9 Q Ms. Chalkley, you indicated in response to
10 Mr. Murray that you did not request the 100 foot
11 buffer. And I guess I get the impression here this is
12 the sort of thing where you, as you indicated, you give
13 and take, and you negotiate.

14 And I was just curious as to when you
15 negotiate like this, why don't you start off at the 100
16 foot buffer on the one extreme, and the developer is
17 hanging at the cliff, and then try to get together?
18 And I guess you got together at 50 feet.

19 A Well, the original plan that was planned with
20 the sewer allocation, had buildings at 25 feet from the
21 water. So that was his negotiating point. And I guess

1 50 feet plus was the compromise, yes.

2 Q Do you recall what your starting point was?

3 A No, I don't.

4 Q You indicated, too, that some of the things
5 that you asked him to do is the -- you know, supply the
6 storm water management, identify wetlands, and so on.

7 And there was a reference made to a criteria
8 or a standard for insofar as possible. It differs,
9 apparently, with every situation; right?

10 A That's correct.

11 Q And would you say -- well, are there -- were
12 there any other standards that you imposed, or that you
13 applied here, that you did not mention to us?

14 A Can I look at my notes for a moment?

15 Q Sure.

16 A I think actually we probably talked about all
17 of them. I just want to reemphasize that their
18 original plan showed the building on the slopes, with
19 buildings about 25 feet from the water.

20 One reason all the standards I'm -- well, let
21 me say that each plan is reviewed and then we set the

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1 insofar as possibles because each site is physically
2 different. So it's very difficult to be exactly the
3 same with every site because every site is not the
4 same.

5 Q Aside from the three standards that you
6 mentioned -- or at least that I have a note of -- can
7 you tell me of any other standards that you imposed, or
8 asked to meet?

9 A Okay. They stayed out of the wetlands. They
10 stayed off the steep slopes. They are going to
11 reforest -- they are doing storm water management.
12 Those are probably the primary things.

13 Q Now, what about parking? What -- can you be
14 a little bit more specific on that?

15 A No, I can't. The subdivision people could
16 probably tell you more about parking requirements and
17 the parking provided.

18 Q Is there a difference between a slope and a
19 cliff?

20 A Probably a degree. You -- a slope, it's
21 gradual. With a cliff, it's a kind of drop off.

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1 Q Because when we went out there, it seemed to
2 me like there were cliffs there, not just slopes.

3 A There are very steep slopes. And if you look
4 at the plans, you'll see that the contour lines are
5 very close together adjacent to the water, which
6 indicates a steep -- steeper slope. And where it gets
7 up into the property, a more gradual spacing of
8 contours.

9 Q Is there any safety criteria that has to be
10 met in something like this? It seems to me like if
11 they were going to put a townhouse 25 feet from a cliff
12 like this, it would be very uneasy sleeping in there.

13 A Let's hope you don't sleepwalk. I'm not
14 aware of any safety regulations.

15 MR. DEURINGER: All right. Thank you, ma'am.

16 CHAIRPERSON HALE: Mr. Schafer?

17 BY MR. SCHAFFER:

18 Q Ms. Chalkley, to follow up a little bit, and
19 correct me please if I'm wrong. But I believe -- has
20 100 foot buffer, but it's 50 foot from a steep slope,
21 which is 15 percent or greater.

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1 A Fifteen percent or greater, yes. And I had
2 said that.

3 Q Right. And to follow up on that, I believe
4 one of Mr. Murray's questions was how close the
5 building was from the slopes. And I -- I have notes
6 that it was five feet. Some of them are just in a line
7 of somewhere around five feet.

8 A I think most of them were more than that.
9 Looking at the -- briefly at the plan, they were like
10 20 feet or so, or maybe more, from the cliff, as he
11 described, but it still had gradual slight slopes, but
12 it wouldn't have been that sudden drop-off that he saw
13 in the field.

14 Q Okay. Just looking specifically at the 15
15 percent. So what you're saying is the average -- not
16 average. What's the extreme -- the closest building to
17 a 15 percent slope?

18 A Except for one area, which is about ten feet,
19 most of them are about 15 to 25.

20 MR. DEURINGER: Just to explain one of my
21 reasons for this question is, what Mr. Deuringer was

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1 saying, that the county started at 100 and went to 50,
2 you're looking at 50 percent. I just wanted to see
3 where you're looking at your -- comparing the contrast,
4 it wasn't really a 50/50 split is what I was concerned
5 about. Thank you.

6 CHAIRPERSON HALE: Are there any other
7 questions for this witness?

8 Mr. Blumenthal?

9 RECROSS EXAMINATION

10 BY MR. BLUMENTHAL:

11 Q Ms. Chalkley, my recollection of an exhibit
12 which was introduced through the original applicant,
13 indicating when the applicant went on a waiting list,
14 in 1983 or '84 -- sewer waiting list -- whether they --
15 there was a whole schedule of subdivisions and there
16 must have been 30 or 40 of them.

17 Do you have a recollection as to whether
18 there were 20, 30, or 40 subdivisions that were placed
19 on the sewer -- what was called the sewer waiting list,
20 back in '83 or '84?

21 A On that waiting list were both major and

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1 minor subdivisions. I'm not sure of the exact numbers,
2 but they were probably divided --

3 Q Twenty to 40?

4 A Probably more than 20 total, but I don't
5 think much more than 20 majors.

6 Q Notwithstanding that each case as you
7 indicated, to the extent that you applied the policy of
8 insofar as possible was different, did your office, if
9 you know, attempt to deal with all of this category of
10 subdivision sewer waiting list in a consistent manner
11 when you tried to apply the policy of insofar as
12 possible?

13 A Yes, I believe we did.

14 Q If you know, of all the subdivisions that
15 were on the waiting list, how many have yet to be
16 approved finally?

17 A As of now?

18 Q As of now.

19 A There's -- of the major subdivisions, there
20 is one I know for sure at least hasn't gone for a
21 revised final, and hasn't gone for a grading permit.

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1 You could check with the subdivision people. And there
2 is maybe one other that I'm not sure of.

3 Q And out of at least 20, 17 have --

4 A Yes.

5 Q How many have you approved?

6 A Looking at this list, there were 13 major
7 subdivisions, so of that, one of them I'm not sure
8 about. One hasn't, and the rest have all at least gone
9 to grading permit, whether it's approved or pending.

10 Q But the subdivisions have been approved?

11 A Yes.

12 Q And as you review -- first of all, were you
13 the person who reviewed, or reviewed with others, from
14 an environmental compliance point of view, those
15 subdivisions that have been -- that have received final
16 subdivision approval?

17 A I didn't do them all, but I probably did most
18 of them.

19 Q And is it your testimony that you applied the
20 same criteria and the same considerations to those
21 which you did review, as to the case which is the

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1 subject of this proceeding?

2 A Yes. We had one other that was somewhat
3 similar, in that it involved a physical layout somewhat
4 like Woods Landing, where it had a steep drop-off to
5 the river, and it was a wooded site, and we worked with
6 them to move the units back.

7 Q Is there anything --

8 A But they didn't adhere to the 100 foot
9 buffer.

10 Q Is there anything about your approval of
11 Woods Landing, Section 2, under your policy of insofar
12 as possible, that is dramatically different or unusual
13 from the other nine or ten major subdivisions which
14 have already been approved by your office, and were on
15 the sewer waiting list?

16 A Not that I can remember.

17 MR. BLUMENTHAL: I have no further questions.

18 CHAIRPERSON HALE: Any further questions for
19 this witness?

20 MS. BAER: I have one.

21 CHAIRPERSON HALE: Ms. Baer.

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REDIRECT EXAMINATION

BY MS. BAER:

Q Ms. Chalkley, you were put on cross-examination through a series of questions about, basically, could this project be developed as townhouses without 100 percent compliance with the buffer, and 100 percent compliance to -- as to wetlands, 100 percent compliance as to deep slopes, et cetera, et cetera.

Had you requested that, would that have been 100 percent compliance to the critical area, or would that have been compliance insofar as possible?

A (No response.)

Q Let me rephrase the question. Does your office use a different standard for 100 percent compliance than for insofar as possible?

A Yes, we do.

Q And what's the difference?

A The standard for 100 percent compliance, if you want to call it that, is for property which comes in that has not previously been subdivided under the

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1 critical area criteria.

2 So if you have a reserved parcel, or a larger
3 parcel, or you were looking to legalized lots,
4 something like that, we'd be looking for complete
5 compliance.

6 Q But in cases where, for example, a property
7 has been exempted because it was -- in order to have a
8 place on the sewer list, as here with Broadneck, do you
9 require that those properties come into complete
10 compliance?

11 A Not if it was exempt. Not if it was a pre-
12 existing legal lot.

13 MS. BAER: I have no further questions.

14 EXAMINATION BY THE BOARD

15 BY CHAIRPERSON HALE:

16 Q Ms. Chalkley, of those 13 major developments
17 that were on the sewer list in '83/'84, were all of
18 them in the critical area?

19 A Yes. Those were the major subdivisions.

20 CHAIRPERSON HALE: Mr. Schafer.

21 .

1 BY MR. SCHAFER:

2 Q To follow up on that, I have a question --
3 point. But were they all extensively critical area, or
4 were they 100 acres and one acre was in the critical
5 area? Were they all to the percentage that this one
6 is?

7 A Okay. If I could just read through briefly
8 -- try to summarize the whole thing.

9 One was partially in and partially out. One
10 was half in, half out. One was totally in; totally in;
11 totally in; totally in; totally in; half in/half out;
12 totally in; totally in; half in/half out; half in/half
13 out; and all in.

14 MR. SCHAFER: Thank you.

15 CHAIRPERSON HALE: Are there any additional
16 questions for this witness?

17 BOARD MEMBERS: (No response.)

18 CHAIRPERSON HALE: Because of the lateness of
19 the hour, we're going to recess this hearing, but
20 before we go off the record, I would like to find a
21 date that we can continue. So if our staff and the

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1 attorneys can get together with the calendar for a
2 moment, and look for a date.

3 (Whereupon, there was a discussion off
4 the record.)

5 CHAIRPERSON HALE: We'll go back on the
6 record.

7 This case will be recessed until Tuesday,
8 August 18th, at 6:30 p.m., in the County Council
9 Chambers, this room.

10 (Whereupon, there was a discussion off
11 the record.)

12 CHAIRPERSON HALE: The Board will conduct, as
13 a result of the passage of the Open Meetings Law, we
14 must read into the record a statement when we hold
15 closed sessions. If you don't want to stay for this,
16 you do not have to.

17 Is there any reason why, while we are on the
18 record, Ms. Chalkley must -- may not be dismissed as a
19 witness?

20 MR. MURRAY: No. No objection.

21 CHAIRPERSON HALE: You are dismissed. Thank

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1 you. I'm sorry.

2 (Whereupon, the witness was excused.)

3 CHAIRPERSON HALE: The Board of Appeals met
4 in closed session on July 1st, 1992, at about 2:30 p.m.
5 until about 2:45 p.m., in the County Council Office, in
6 the Arundel Center.

7 The purpose of the closed session was to
8 consult with the Board's counsel to obtain legal
9 advice.

10 All members of the Board were present and the
11 vote to close the session was unanimous. The session
12 was closed, pursuant to Section 10-508(A)(7) of the
13 Open Meetings Act.

14 The Board discussed legal issues raised
15 during the hearing of the appeal of Thomas Pavlinic.
16 The persons present were the following: all Board
17 members, and Ms. Davis-Loomis, and Mrs. Lavelle. No
18 action was taken during the closed session.

19 The Board of Appeals met in closed session on
20 July 1, 1992, from about 2:50 p.m. to about three p.m.,
21 in the County Council Office, in the Arundel Center, in

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1 the same case as the previous meeting.

2 The purpose of the closed session was to
3 consult with the Board's counsel to obtain legal
4 advice.

5 All members of the Board were present and a
6 vote to close the session was unanimous. The session
7 was closed pursuant to Section 10-508(A)(7) of the Open
8 Meetings Act.

9 The Board discussed legal issues raised
10 during the hearing on the appeal of Thomas Pavlinic.

11 The persons present were the following: all
12 Board members, Mrs. Davis-Loomis, and Mrs. Lavelle.

13 The Board of Appeals met in closed session on
14 July 8th, 1992, from 3:15 p.m. until 4:35 p.m., in the
15 County Council Office in the Arundel Center.

16 The purpose of the closed session was to
17 consult with the Board's counsel to obtain legal
18 advice.

19 All members of the Board were present and the
20 vote to close the session was unanimous. The session
21 was closed pursuant to Section 10-508(A)(7) of the Open

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1 Meetings Act.

2 The Board discussed legal issues raised
3 during the hearing on the appeal of May Centers,
4 Annapolis Mall Limited Partnership.

5 The persons present were the following: all
6 Board members, Mrs. Davis-Loomis, and Mrs. Anthony.

7 No action was taken during the closed
8 session.

9 This meeting of the Board is adjourned..

10 (Whereupon, at 9:45 a.m., the hearing
11 was adjourned.)

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E X H I B I T S

<u>PROTESTANT'S</u> <u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>REC'D</u>
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No. 9	Curriculum Vitae of David Navecky	44	44
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<u>COUNTY'S</u> <u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>REC'D</u>
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1 CERTIFICATE OF NOTARY

2 I, Susan Dilley, the officer before whom the
3 foregoing testimony was taken, do hereby certify that
4 the witnesses whose testimony appears in the foregoing
5 transcript were duly sworn before me; that the
6 testimony of said witnesses was taken by me by magnetic
7 tape and thereafter reduced to typewriting by me or
8 under my direction; that said testimony is a true
9 record of the testimony given by said witnesses; that I
10 am neither counsel for, related to, nor employed by any
11 of the parties to the action in which this testimony is
12 taken; and, further, that I am not a relative or
13 employee of any attorney or counsel employed by the
14 parties hereto, nor financially or otherwise interested
15 in the outcome of the action.

16 Susan Dilley
17 Susan Dilley
18 Notary Public in and for
19 the State of Maryland

20 My Commission Expires:

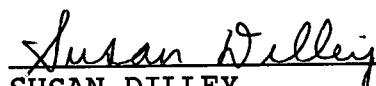
21 September 14, 1993




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I, SUSAN DILLEY, the officer before whom the foregoing testimony was taken, do hereby certify that the witnesses whose testimony appears in the foregoing transcript appeared before me; that the testimony of said witnesses was taken by me by magnetic tape and thereafter reduced to typewriting by me or under my direction; that said testimony is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony is taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.


SUSAN DILLEY
Notary Public in and for
the State of Maryland



My Commission Expires:

September 14, 1993

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BEFORE THE ANNE ARUNDEL COUNTY BOARD OF APPEALS

IN THE MATTER OF:

WOODS LANDING #2
JOINT VENTURE

:
:
CASE NO.: BA 10-92A
:
:
:

Tuesday, August 18, 1992

Pursuant to Notice, the above-entitled
hearing was held before the ANNE ARUNDEL COUNTY BOARD
OF APPEALS, BARBARA HALE, CHAIRPERSON, commencing at
6:40 p.m., there being present:

BOARD MEMBERS PRESENT:

JOSEPH A. JOHNSON
DAVID M. SCHAFER
F. GEORGE DEURINGER, Vice-Chairperson
JOHN W. BORING
ANTHONY V. LAMARTINA
P. TYSON BENNETT, Counsel to the Board

ON BEHALF OF THE APPLICANT/DEVELOPER, WOODS LANDING
#2 JOINT VENTURE:

HARRY C. BLUMENTHAL, ESQUIRE

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ON BEHALF OF THE PROTESTANTS, WOODS LANDING COMMUNITY
SERVICE ASSOCIATION, INC., AND STEVEN AND BONNIE TREAT,
AND ALBERT AND BETSY KULLE:

JOHN MURRAY, ESQUIRE

ON BEHALF OF ANNE ARUNDEL COUNTY:

JAMIE BAER, ESQUIRE

REPORTED BY: SUSAN DILLEY, NOTARY PUBLIC

P R O C E E D I N G S

CHAIRPERSON HALE: The Anne Arundel County Board of Appeals is convened this 18th day of August, 1992, to continue with an appeal from an administrative decision of the Office of Planning and Zoning, granting approval of Subdivision No. 73-519 and Project No. 91-065 for Woods Landing, Section Two, Plats one through three, on property located in part on the south side of Woods Landing Drive, and in part at the west end of Woods Landing Drive, and bounding the southern end of the Little Magothy River, Annapolis.

At the end of the last hearing, we had completed testimony from one of the County's witnesses and are ready to proceed with the County's case.

MS. BAER: Call Chris Soldano.

CHAIRPERSON HALE: Would you raise your right hand, please.

Whereupon,

CHRIS SOLDANO,
a witness, called for examination by counsel for the County, was duly sworn, and was examined and testified

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1 as follows:

2 CHAIRPERSON HALE: Would you give us your
3 name and address for the record, please, and spell your
4 last name.

5 THE WITNESS: Christopher Soldano,
6 S-O-L-D-A-N-O.

7 CHAIRPERSON HALE: And your business address.

8 THE WITNESS: My business address is 2664
9 Riva Road, Annapolis, Maryland 21401.

10 CHAIRPERSON HALE: Thank you.

11 MS. BAER: Mr. Soldano, I don't believe
12 you've signed the witness list. If you have, I haven't
13 found your name on it yet.

14 THE WITNESS: I don't believe so.

15 MS. BAER: Would you sign that, please.

16 DIRECT EXAMINATION

17 BY MS. BAER:

18 Q Mr. Soldano, for whom are you employed?

19 A The Office of Planning and Zoning for Anne
20 Arundel County.

21 Q And how long have you been so employed?

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1 A Just over five years.

2 Q And what is your present job position in
3 Planning and Zoning?

4 A I'm a Subdivision Planner, which is a Planner
5 II position in the development division.

6 Q And prior to that, what was your assignment
7 in Planning and Zoning?

8 A I worked as the landscape planner in the
9 commercial permits division. We deal in commercial
10 permits and subdivision applications.

11 Q And what was your planning experience or
12 education prior to coming with Anne Arundel County?

13 A I have a bachelor of science in landscape
14 architecture, with a minor in urban planning.

15 Q And from what university or college did you
16 obtain that education?

17 A West Virginia University.

18 Q And, Mr. Soldano, how long have you been
19 working in the subdivision group?

20 A I've been reviewing subdivisions for
21 approximately 3-1/2 years for Anne Arundel County, both

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1 residential and commercial subdivisions.

2 Q Ms. Hale and members of the Board, I would
3 offer Mr. Soldano as an expert in the subdivision
4 planning.

5 CHAIRPERSON HALE: Is there any objection?

6 MR. MURRAY: No.

7 MR. BLUMENTHAL: (Shakes head negatively.)

8 CHAIRPERSON HALE: We'll recognize him as
9 such.

10 BY MS. BAER:

11 Q Mr. Soldano, are you familiar with the Woods
12 Landing Joint Venture subdivision that is the subject
13 of this case BA 10-92A?

14 A Yes, I am. I reviewed the plan from its
15 final plan submittal in 1991 and reviewed it and took
16 it to plat approval.

17 Q And when you say "plat approval," what do you
18 mean by that?

19 A A signature from the Office of Planning and
20 Zoning.

21 Q Would you briefly describe the life of a

1 prospective subdivision plat from its time of initial
2 submission to the time of that final plat approval,
3 just to outline what happens through the application
4 process.

5 A Well, our subdivision process is basically a
6 two-step process, sketch submittal and final plan
7 submittal. There's also a formal presubmittal, which
8 is a very rough idea of what a developer may want to
9 do. But this didn't come into play in this particular
10 subdivision.

11 The sketch plan shows the general features of
12 the site, the layout of the subdivision that goes to
13 all the review agencies for their approval, and once
14 the sketch plan is approved, the applicant has one year
15 to submit final plans. And then we go from there to
16 plat approval, which is the signature from the Office
17 of Planning and Zoning.

18 Q And do your records indicate when this
19 particular plan got sketch approval?

20 A Sketch approval was given -- let me pull this
21 off of here. I do have the sketch approval date. I

1 have the submittal date for the sketch from 1983, which
2 was October 26th, and then the date it was placed on
3 the sewer allocation waiting list, which was April
4 19th, 1985.

5 Q What is the significance of being placed on
6 the waiting list? What does that indicate about the
7 approval process for that subdivision?

8 A It indicates that all the key review
9 agencies, or, in fact, all of the review agencies have
10 granted an approval on the subdivision. They've met
11 all the requirements of the subdivision regulations,
12 and they are simply waiting for an allocation of sewer
13 before they can go to construction.

14 Q And was this particular waiting list
15 established because of a failure of adequate facilities
16 on the Broadneck peninsula?

17 A Yes, it was.

18 Q And was it one of several, in fact, that were
19 on that list?

20 A Yes. There was a list of quite a few
21 subdivisions in the Broadneck peninsula that were all

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1 placed on the waiting list in the early 1980s, and when
2 that moratorium was lifted in 1989, that list was then
3 used to send out letters stating that the moratorium
4 had been lifted, and they had certain requirements that
5 they had to meet in order to finalize their plat and go
6 to construction.

7 Q And, in this case, was a special exception a
8 part of one of the requirements they had to meet in
9 order to go to construction?

10 A Not a special exception. The original
11 special exceptions were approved back in the 1970s for
12 the entire subdivision. That would be Sections One and
13 Section Two. The subdivision for Section One was
14 approved in 1980 and built, and then Section Two came
15 in in the early 1980s and was put on the sewer waiting
16 list. And the special exception was vested by virtue
17 of that Section One approval.

18 Q And, in your review capacity, do you consider
19 this property the subject of a special exception?

20 A Yes. It's a special exception for townhouses
21 in the R5 zone.

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1 Q Now, in that process that you have described,
2 you've given the Board a from-now schedule for life of
3 the submission of a plat till signature, final
4 signature. Is there a process by which neighbors,
5 adjoining property owners, or interested parties can
6 participate in the planning or have input into that
7 final approved plat?

8 A Yes. During the special exception, there are
9 signs posted on the property. Surrounding property
10 owners within 175 feet are notified of the application,
11 and they are given the opportunity to present their
12 concerns at the special exception hearing.

13 Also, in our subdivision process, when you
14 come in for a sketch plan, the property is again
15 posted, indicating that there's a sketch plan submitted
16 for the property. There is a technical review meeting
17 to gather comments from all the review agencies, being
18 the Department of Public Works, Utilities, Health
19 Department, and so on and so forth. And, at that
20 point, we allow the public to attend that and express
21 any concerns they have, and we try to work with them to

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1 resolve those comments.

2 Q Were there any meetings of that nature
3 regarding this particular subdivision, part two, the
4 second section?

5 A Those meetings would have all been part of
6 the special exception process in the late '70s. It
7 also would have been part of the sketch plan submittal
8 in 1983. However, when we do have something on the
9 waiting list that comes off, at that point, it is -- we
10 consider that an approved subdivision, and, therefore,
11 there is no public meeting.

12 Q Now, was there, in fact, an opportunity for
13 the public or for citizen input, either directly or
14 through counsel, in this case?

15 A In this particular case, we received a letter
16 concerning the Section Two subdivision when it was
17 being reviewed for plat approval.

18 Q And when was that?

19 A That -- the final plan submittal to finalize
20 the plat after the moratorium was lifted was submitted
21 in March of 1991.

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1 In August, we received a letter from the
2 Woods Landing Section One Homeowners Association
3 outlining some concerns they had, some quite extensive
4 concerns they had. We had a meeting with the
5 Homeowners Association representatives and the
6 developer, and, after that meeting, we sent a letter to
7 the Homeowners Association outlining what we can do to
8 try to rectify some of the concerns they had, but we
9 could not, obviously, rectify all of their concerns.

10 Q What concerns that were expressed to you did
11 you try to address?

12 A Well, some of the specific concerns that they
13 presented to us dealt with the density requirements,
14 the fact that it was not subject to the critical area
15 legislation. They were concerned about the sediment
16 control plans, the name of the subdivision and
17 recreational areas, the use of those areas between
18 Sections One and Two, and so on and so forth.

19 So we returned a letter to them after our
20 meeting and said that some of the issues could be
21 addressed during our review, but that the density issue

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1 was basically a requirement of the special exception,
2 which was previously approved. And it also -- the
3 subdivision was, in fact, exempt from the critical area
4 legislation.

5 And so we had done well above, in our view,
6 what we were actually permitted to do by the law in
7 asking that the developer meet some of the critical
8 area requirements, such as storm water management,
9 moving the structures back from the water, which were
10 to be placed on the 25 percent slopes and 15 feet from
11 the water. We had them revise the plan to move those
12 back to provide a 25-foot buffer to steep slopes, as
13 stipulated in our grading ordinance, which is article
14 21.

15 So we felt like we had met many of the
16 concerns or more concerns than we normally were bound
17 to by the law, and that the density issue was not
18 something that we could rectify for the Homeowners
19 Association.

20 Q And, now, in dealing with the subdivision
21 plat, did you coordinate with the other agencies for

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1 their approvals, or was any other approval required
2 other than your agency for that subdivision plat, once
3 it has reached the final submittal?

4 A Yes. Basically, about 50 percent of my job
5 is coordination with the other agencies, coordination
6 of comments to make sure that it's consistent. I try
7 to problem solve any issues that come up, and make sure
8 we get all agency approvals prior to plat approval.

9 Q And did you do that in this case?

10 A Yes, we did.

11 Q And what agencies, if you recall, made
12 comment or gave approval as to the subdivision?

13 A All agencies gave approval to the
14 subdivision. That includes the Department of Public
15 Works, the Department of Utilities, Traffic Engineering
16 from the Department of Public Works, Health Department,
17 Recreation and Parks, Board of Education, and the Fire
18 Department. Those are the major agencies. State
19 Highway Administration, excuse me.

20 Q In addition to that, do you also do an
21 independent review to afford that the plat meets

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1 subdivision regulations?

2 A Yes. I review it for -- in compliance with
3 article 26, which is the subdivision regulations. We
4 also make and design comments to improve vehicular
5 circulation, reduce disturbance, whether it's in or out
6 of the critical area. In this case, obviously, it was
7 in, and to try to improve the design through our
8 subdivision regulations.

9 Q So if I understand correctly, you have both
10 indicated that this is exempt from critical area
11 requirements, but, nevertheless, critical area
12 requirements were, to at least some extent, imposed
13 anyway.

14 A Yes. When the sewer moratorium was about to
15 be lifted, it was the Office of Planning and Zoning,
16 through our Office of Law, sent letters to all of the
17 developers or owners of the properties that were on the
18 sewer waiting list, indicating to them specific
19 requirements they would have to meet to have to try to
20 upgrade the designs of the subdivisions to provide
21 environmental benefits.

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1 We weren't able to tell them that they were
2 subject to the Chesapeake Bay critical area criteria,
3 but we wanted to try to modify the designs as much as
4 we could to improve the environmental aspects of the
5 design.

6 That included, as I stated before, the storm
7 water management, which was not required on any of
8 these subdivisions before the moratorium went into
9 effect. It also included moving units away from steep
10 slopes, identifying wetlands, identifying large trees
11 which could be retained, and many other items along
12 those lines.

13 This particular subdivision, I believe a
14 meeting was held on the site with my previous
15 supervisor, the development administrator, our
16 environmental division, the developer, and I'm not sure
17 exactly who else was there. I was not at the meeting,
18 but that meeting was to determine and look at the site
19 to see what major environmental issues should be
20 addressed with their resubmittal. That included
21 locating large-diameter specimen trees, locating steep

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1 slopes which should be left undisturbed, and locating
2 tidal wetlands.

3 As a result of that meeting, they did submit
4 the final plans, as I stated, in March 28th, 1991.
5 There was a review meeting held where all the review
6 agencies provided comments, and at that time we
7 discussed how to resolve those comments.

8 And there was a nuance letter from the
9 meeting, and we asked for additional environmental
10 restraints or modifications to save additional trees,
11 reduce impervious surfaces. So we did not just approve
12 what they submitted at the final plan submittal after
13 the sewer moratorium was lifted.

14 Q As a planner, would you say that there was a
15 significant change for environmental reasons from the
16 approval process when the subdivision was placed on the
17 waiting list to the current approved plat?

18 A Well, it's basically night and day from our
19 standpoint. When you have a 15-foot setback to water,
20 and your cantilevering units out on 25 percent slopes,
21 and you manage to pull those back to provide a minimum

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1 50-foot setback, I know there's been discussion before
2 as to how these criteria were established.

3 Since we were working with an unknown
4 quantity, we did pull from other regulations to try to
5 establish a known setback in a known steep-slope
6 undisturbed buffer, which is article 21, the grading
7 ordinance, and that is a 25-foot undisturbed buffer to
8 25 percent slopes.

9 Each case was looked at individually. We did
10 not try to establish concrete guidelines because we had
11 to allow flexibility, and since we were asking the
12 developers to do this for environmental benefit, not
13 based on law. And, so, there were no concrete
14 guidelines established, but we did pull from our
15 regulations in the County law and established a 50-foot
16 setback, 25-foot undisturbed buffer to 25 percent
17 slopes, requiring water quality storm water management
18 and, as I said before, large specimen trees being saved
19 where possible.

20 Q And, as a result of all of that, did you, on
21 behalf of the Planning and Zoning, do a final review of

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1 the subdivision to affirm that it is in compliance with
2 the subdivision article of the Anne Arundel County
3 Code?

4 A Yes, I did. And after that review, when it
5 was established that it had, in fact, met the
6 requirements, as they didn't previously before the
7 moratorium went into effect, but they maintained that
8 compliance with the revisions to the plans, and then we
9 sent it to the Planning and Zoning officer for
10 signature once we had received all the agency
11 approvals.

12 Q And are you satisfied, even to today, that
13 that was a properly approved subdivision?

14 A Yes, I am, in light of the fact that the
15 interpretation has been that the cell subdivisions on
16 the sewer waiting list were, in fact, exempt from the
17 critical area criteria. I think the County did it well
18 above and beyond what was required by law and tried to
19 establish as much environmental control as we could.

20 MS. BAER: I have nothing further of this
21 witness at this time.

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1 CHAIRPERSON HALE: Mr. Blumenthal.

2 CROSS-EXAMINATION

3 BY MR. BLUMENTHAL:

4 Q Mr. Soldano, the critical area legislation
5 adopted by Anne Arundel County was adopted by bill --
6 one of the concluding sections, section three on page
7 75 of that bill, there are five exemptions set forth.

8 Let me just read the fourth exemption to you,
9 and then I'll ask you a question. "Proposed
10 subdivisions that were placed by the County on a
11 waiting list for a watered or waste wood allocation
12 that have been complied with the provisions of bills
13 number 42-86 or 90-86 are exempt from this ordinance."

14 Now, is that the provision under which your
15 office has processed the subdivision on the basis that
16 it is totally exempt from the legal operation in effect
17 of the Anne Arundel County critical area legislation?

18 A That's correct.

19 Q Can we therefore assume that you have also
20 looked at the prior bills, 42-86 or 90-86, and
21 determined that this subdivision complied with those

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1 bills, also, in order to take effect of the exemption
2 provided by bill 49-88?

3 A That's correct.

4 Q Now, within bill 49-88, as distinguished from
5 the five exemptions set forth in section three on page
6 78, are there other provisions in which properties are
7 not totally exempt, but they are merely grandfathered
8 in a certain extent?

9 A Yes. There are provisions in the bill or in
10 the legislation that allow for existing legal lots to
11 be considered grandfathered and would be looked at,
12 meeting the criteria insofar as possible.

13 Q All right. So there are two kinds of
14 situations, then, are there, that do not comply with
15 the critical area law in Anne Arundel County. One, are
16 those items which are exempt, one of the categories,
17 including the subject site; is that correct?

18 A That's correct.

19 Q And there are others, such as legally
20 existing building lots for which permits have not been
21 issued and you apply for a building permit, and there

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1 you try to hold the applicant for that permit to comply
2 with the critical area provisions "insofar as
3 possible," however you define that?

4 A That's correct.

5 Q And you testified that, notwithstanding that
6 the property before this Board today was totally exempt
7 from the provisions of bill 49-88, critical area
8 legislation, you held the applicant to a standard of
9 "insofar as possible" as you define that term?

10 A I'd like to distinguish that between the
11 language in the law that states, "You are subject to
12 insofar as possible." This was a unique situation
13 where we tried to apply some type of proven criteria
14 that we could use to improve the site plans. We were
15 not holding them to a grandfather clause, or we were
16 not holding them to "insofar as possible" as defined in
17 the legislation.

18 Q Is it fair to say, then, that if the
19 applicant was not a willing applicant or willing to
20 spend its money to redesign or reconsider, the
21 applicant could have said, "No, we want to go with the

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1 original subdivision," and it would have been exempt as
2 per your testimony?

3 A That would be true. It turned out that most
4 of the developers felt that it was a worthwhile thing
5 to do.

6 Q Well, I understand that. And is it fair to
7 say you did a little jawboning with the developers
8 while you didn't think you had the law to back you up,
9 you told them that they should rethink and relook and
10 re-engineer?

11 A We tried to show them the benefits of
12 complying with the criteria in the letter that was sent
13 out by Frank Ward.

14 Q That's a nice way of -- the same jawboning, I
15 suspect.

16 And did this -- I take it from your testimony
17 that this developer did re-engineer and redesign within
18 the primaries that you set forth?

19 A Yes, he did. He did most of everything that
20 we asked him to do.

21 Q Now, you may not know the answer to this

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1 question due to the length of time with which you've
2 been working for the County. Then, again, you may. Do
3 you know the genesis of the -- the origination of the
4 waiting list, how it came to be; in particular, was
5 there a sewer allocation program in existence when this
6 waiting list was started?

7 A I'm afraid I can't answer that for you.

8 Q With regard to the -- how many of the
9 subdivisions did you personally handle that were on the
10 sewer waiting list in the Broadneck peninsula?

11 A I handled two townhouse developments, one
12 being Pine Valley, which is very similar to this, which
13 is under construction. We held them to similar
14 criteria, a 25-foot buffer to steep slopes and a 50-
15 foot setback to the water.

16 Q Are you aware of other subdivisions in which
17 perhaps you didn't -- you weren't personally involved,
18 but which your office handled through this subdivision
19 process of properties that were on the sewer waiting
20 list?

21 A I am somewhat familiar with them. I don't

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1 think I could give you specifics.

2 Q Do you have an opinion as to whether the
3 handling of all these cases, albeit different
4 properties, was, by your office, on a fairly consistent
5 basis trying to establish consistent standards for
6 which you asked developers to comply?

7 A We tried to be as consistent as possible in
8 administering this whole program. We did sent out the
9 same criteria to everyone, and, although each site was
10 looked at on a case-by-case basis, the general
11 guidelines followed by everyone that was on the waiting
12 list was seen.

13 Q When a subdivision such as this was put on
14 the sewer waiting list, what does that mean? What's
15 the status of that subdivision so far as your office is
16 concerned?

17 A As far as we're concerned, the project is
18 approved. However, there is no plat approval and no
19 construction can take place, no application for
20 permits, and so forth.

21 MR. BLUMENTHAL: Thank you. I have no

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1 further questions at this time.

2 CHAIRPERSON HALE: Mr. Murray.

3 CROSS-EXAMINATION

4 BY MR. MURRAY:

5 Q Mr. Soldano, the process that you've just
6 described regarding the Woods Landing subdivision
7 review, would it be fair to characterize your
8 involvement in that as being the principal individual
9 in charge for the department?

10 A I was the project manager for this particular
11 subdivision.

12 Q Approximately how many times did you
13 personally meet with the developers?

14 A I met with them at the initial subdivision
15 review meeting to affirm plans. I met them one time
16 with the Homeowners Association, and that was the only
17 two times we met with the developer himself. The rest
18 of the time it was me and the engineer that we were
19 dealing with in trying to resolve the agency comments..

20 Q You have mentioned a -- I believe you
21 characterized it as a letter -- from Mr. Ward to the

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1 owners of subdivisions such as the one in question.
2 I'm going to show you a document and ask you if this
3 was part of that letter.

4 (Whereupon, the witness reviewed the
5 document as requested.)

6 THE WITNESS: I believe so.

7 MR. MURRAY: Can I get that marked, please,
8 as an exhibit?

9 CHAIRPERSON HALE: Applicant's No. 30 --
10 Protestants' No. 11.

11 (Whereupon, the document was marked for
12 identification Protestants' Exhibit No. 11.)

13 BY MR. MURRAY:

14 Q Mr. Soldano, what was the origin of the
15 requirements set forth in this document marked
16 Protestants' Exhibit 11?

17 A The actual origin of the wording?

18 Q Yes.

19 A I can't speak to it. It seems to be a
20 compilation of many of the critical area requirements.

21 Q Was this a document that was generated by

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1 your department?

2 A Yes. It was sent out by Frank Ward, who was
3 the development administrator at that time.

4 Q You worked generally in that department, and
5 he was the head of the department?

6 A That's correct.

7 Q In this document, it indicates that the
8 property is subject to the waiting list, that they will
9 be required to meet the critical area criteria insofar
10 as possible. Now, is it your testimony that that was a
11 requirement which had no basis in law?

12 A Yes.

13 Q And was that, as you understood it, the
14 understanding of the department at that time?

15 A We felt, after consulting with the Office of
16 Law, that there was -- again, I can't speak to all of
17 the discussions that took place. However, it's been
18 conveyed to me that the Office of Law felt that we were
19 the rights of the County to request that these issues
20 be addressed as much as they could before we went to
21 plat signature for the ones on the waiting list.

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1 Q When you spoke with the developer of this
2 project, or his representative, or their
3 representatives, did you place this policy before them
4 as a requirement or a request?

5 A That's a bit of a gray area. We requested
6 that they comply with these issues in order to bring
7 the subdivision up to some standard of environmental
8 plan.

9 Q Among the requirements stated in this
10 document, is a requirement that a 100-foot buffer be
11 provided to tidal wetlands. Is that -- was that
12 adhered to in the final approved plat?

13 A For this particular subdivision? I do not
14 believe that a 100-foot buffer was established. I
15 believe it was 50 feet. And, again, this states that
16 it's turning to meet the requirements as much as
17 possible.

18 Q All right. The language that appears here
19 and others have used and you've used is "insofar as
20 possible." That's exactly what it said.

21 A For lack of a better term.

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1 Q Do you know where that language came from?

2 A Well, obviously, it was part of the critical
3 area legislation that grandfathered -- legal lots
4 meeting the criteria insofar as possible.

5 Q So, would it be safe -- or fair to say that
6 the policy represented by this document was intended to
7 be borrowed, if you will, from the critical area
8 criteria?

9 A I wouldn't go as far as saying it was
10 borrowed. We were trying to have the subdivisions meet
11 the certain criteria. I can't speak to the wording
12 that was used in the letter, but it was not a
13 grandfathering provision that we were saying had to
14 meet these under the grandfather clause.

15 Q Okay. I understand that you're saying this
16 doesn't have its authority in the grandfather clause,
17 but the language, the "insofar as possible" language is
18 identical, is it not?

19 A Yes, it is.

20 Q And another one of the criteria that you
21 list, or that was listed in the document is that, "a

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1 100-foot buffer must be provided to waterfront." And
2 that isn't required in this particular project as final
3 approval, was it?

4 A No. A 50-foot minimum setback was required
5 after taking a look at the site. It was determined
6 that there were specific specimen trees that could be
7 saved, be hurting the 100-foot buffer, which would not
8 be saved if we had to keep the 100-foot buffer as is.
9 So the 50 foot seemed to be a logical solution. We
10 have site plans that will verify that if you wanted to
11 take a look at them.

12 Q In this particular case, when you applied the
13 "insofar as possible" concept, was it your
14 determination that established the parameters that the
15 developer would be required to comply with, or were
16 there other people involved, making that call?

17 A Well, being project manager, I'm ultimately
18 responsible for that. However, the environmental
19 division is or was involved in discussions, as I
20 stated, the meeting at the site to okay certain
21 specific site amenities, if you will.

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1 Q So you had input from others, but,
2 essentially, you made the call?

3 A Well, not having been at the site meeting, I
4 normally take the recommendations of the review
5 agencies very carefully and review those and make sure
6 that they're in compliance with the subdivision
7 regulations. And if they make sense from a claiming
8 standpoint, then we go ahead with that recommendation.
9 In this case, that was how it transpired.

10 Q Is it a fair statement to say that the
11 "insofar as possible" concept does not constitute a
12 bright line?

13 A Say that again.

14 Q Is it fair to say that the "insofar as
15 possible" concept is not a bright line?

16 A I don't understand your term, to be honest
17 with you.

18 Q Let me restate the question then.

19 As you apply the "insofar as possible"
20 concept in this particular case, was it clear to you
21 exactly what buffer, say, from tidal wetlands, was

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1 going to be appropriate to comply with the "insofar as
2 possible" notion?

3 A As a general guideline for creating the
4 initial revised site plan, we used the 50-foot setback
5 as a minimum. When reviewing the plans, if we saw an
6 opportunity to move units back; eliminate roads that
7 were unnecessary, which we did in this case; eliminate
8 a pier and reduce it to a fishing pier rather than a
9 community marina; and eliminate the vehicular access to
10 that pier. Those types of things we looked at on the
11 site plan and made suggestions. So there were some
12 basic criteria that were used, as I said before, but if
13 we saw an opportunity to increase those without a major
14 conflict, then we proceeded that way.

15 Q Did you, in this case, ever request the
16 developer or the developer's representatives to submit
17 a plan, if you will, that was any more stringent in the
18 application of the critical area criteria than the one
19 that got approved?

20 A Yes. Our revised -- our comments at the
21 initial review meeting required them to revise several

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1 site planning issues to meet our requirements, or to
2 meet our suggestions, and, so, yes, we did ask for a
3 revised plan that did, in fact, add benefit to the
4 environment.

5 Q Did you ever ask for anything more stringent
6 than the one that was approved?

7 A You mean from the density standpoint?

8 Q Or for any of the other critical area
9 criteria, setbacks, impervious surface, deforestation,
10 what have you.

11 A As I stated, our comments for reduction --
12 well, our comments resulted in a fairly and significant
13 reduction in impervious by elimination of the access
14 road down to the pier. That's, you know, a fairly
15 significant reduction in paving. We adjusted some
16 units to save additional trees, and tried to work with
17 the parking layout to provide additional buffer to
18 Section One.

19 Q But all those things were incorporated into
20 the final approved plan, were they not?

21 A Yes, but it was a revised plan.

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1 Q I understand. My question to you is, did you
2 ever ask the developer or the developer's
3 representatives to do more in the way of satisfying the
4 criteria than is reflected on the final plan?

5 A I don't believe so. Is that the equivalent
6 well beyond what we were entitled?

7 Q You mentioned -- I think you mentioned
8 earlier that the original sketch plan for this project
9 was submitted in October 26th of '85; is that correct?

10 A '83.

11 Q '83. And then, in April of '85, the sewer
12 allocation waiting list had this development on it?

13 A That's correct.

14 Q But you don't know when or in what form any
15 kind of approval of the sketch plan or any other
16 submittal occurred?

17 A I don't have that information with me. I can
18 supply that.

19 Q Final approval of this particular subdivision
20 plat occurred on December 31, 1991?

21 A That's correct.

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1 Q On any of the other projects on which you
2 applied the "insofar as possible" policy, did you
3 require the development to hold to the 100-foot
4 setback?

5 A Not on the projects that I reviewed. We were
6 consistent with trying to establish where the steep
7 slopes were, and that really guided what the setback to
8 the water would be. Both projects I worked on had a
9 steep area leading directly down to the water.

10 Q In performing your functions, do you have
11 occasion to apply the local critical area program?

12 A For subdivisions that weren't on the waiting
13 list?

14 Q Yes.

15 A Yes.

16 Q And even with respect to subdivisions that
17 were on the waiting list, would you have occasion to
18 deal with a building permit application, be it
19 normally?

20 Are you familiar with the section in the
21 local critical area program which requires building

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1 permit applications for developments that haven't been
2 approved in compliance with the critical area criteria
3 to be reviewed to comply with the requirements "insofar
4 as possible"?

5 A I believe I'm familiar with that.

6 Q Is there any reason to believe, in this case,
7 that the analysis that you have done in connection with
8 this policy, with regard to the subdivisions, will be
9 applied in exactly the same manner at the building
10 permit stage?

11 A Yes, it would be. The overall subdivision is
12 being reviewed. When the individual clusters of
13 townhomes come in for building permit, they will be
14 reviewed as per the approved plat. I believe the
15 section you're referring to would not apply, because
16 the subdivision was exempt from the Chesapeake Bay
17 critical area legislation.

18 Q Exempt in accordance with your understanding
19 of the local grandfathering clause?

20 A No. Exempt per the bill under that section,
21 which Mr. Blumenthal read earlier.

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1 Q That's 49-88 you're talking about?

2 A Right.

3 Q The language, "insofar as possible," why
4 isn't it possible for this development to comply with
5 the critical area criteria?

6 A Well, I would simply again say that they're
7 exempt. Therefore, we cannot require them to comply
8 with it. We tried to get them to do it as much as
9 possible to meet the criteria in order to improve the
10 subdivision from an environmental standpoint, but when
11 it's exempt, it's exempt.

12 Q How can you contend that you're trying to get
13 them to do as much as possible when you recently
14 admitted that you never asked them to do any more than
15 what was approved?

16 MS. BAER: Objection. That is not a clear
17 representation of Mr. Soldano's testimony. Mr. Soldano
18 clearly testified that, during the process, they asked
19 for far more, including an increase in buffer from 15
20 to 50 feet minimum, protection of steep slopes, the
21 elimination of a community marina, the elimination of

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1 an access road, and then, finally, after all of those
2 things were done, there was approval. I think that the
3 question is misrepresenting, at the very least.

4 CHAIRPERSON HALE: The witness testified that
5 they never asked the developer to do more than what was
6 on the final plat, but we'll sustain your objection and
7 ask you to restate the question. Rephrase.

8 BY MR. MURRAY:

9 Q Mr. Soldano did testify to that, and, in
10 addition, he just said a moment ago that, in applying
11 the concept of "insofar as possible," they went as far
12 as was possible. And I said, in my question, how can
13 that be, if you didn't ask the developer to do more
14 than what is reflected in the final plan?

15 MS. BAER: Is that your question restated to
16 him?

17 MR. MURRAY: Yes.

18 THE WITNESS: Well, I would simply say this.
19 When reviewing an exempt subdivision, and they're
20 willing to do well beyond the law to improve the
21 environmental aspects of the subdivision, we feel -- or

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1 I feel that we did as much as we possibly could to help
2 them comply with some environmental standards.

3 And, again, I will point back to what I
4 discussed earlier in the analysis of the site that was
5 done before they submitted plans, in locating specimen
6 trees, which we feel is a significant amenity for a
7 subdivision. If you can save specimen trees, and it
8 meant going into the buffer, some to do yet, they --
9 you know, we felt that that was a proper planning
10 decision in order to save those trees.

11 The further you moved back in, the less trees
12 you save within the site. And an overall dispersion of
13 specimen trees is a better amenity for the subdivision
14 and possibly better habitat than just a 100-foot buffer
15 with the entire site cleared on the interior.

16 Q My question is not intended to engage you in
17 a debate about what is or isn't good planning. I
18 really just wanted to understand what -- when you knew
19 that you had gotten to the point where, in this
20 particular case, the developer had been taken as far as
21 possible to comply with the critical area criteria. So

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1 you're saying, basically, you had a feeling that it was
2 the right time to stop asking.

3 A I made a professional decision, in
4 conjunction with the environmental division in the
5 Office of Planning and Zoning, that this site plan was
6 a remarkable improvement over what was originally
7 approved before it went on the waiting list. Yes, we
8 made that decision, and a lot of things that went into
9 that decision, which I've stated, and I will stand by.

10 Q So, just to confirm, it was a judgment on
11 your part and those of the people you consulted with
12 and worked with in your department that what the
13 developer ended up with as the approved plan was
14 adequate for compliance with critical area purposes; is
15 that correct?

16 A Again, I don't agree with your
17 characterization. I don't know how many times I have
18 to go back to saying that they were exempt.

19 Q But if they were exempt, why did you spend so
20 much time trying to do the good thing of getting
21 compliance with these critical area criteria "insofar

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1 as possible," which is what you've said you tried to
2 do?

3 A Am I to understand that you're criticizing us
4 for doing more for the environment than what the law
5 calls for?

6 Q Mr. Soldano, I get to ask the questions here.
7 And, no, I'm not criticizing you. I'm simply asking
8 you questions, which I would appreciate your answering.

9 A Well, that is my answer.

10 Q You didn't answer my last question, which is
11 -- again, I'll restate it.

12 In deciding when to stop asking the developer
13 to enhance the critical area criteria compliance for
14 this project, was that essentially your decision based
15 upon your professional judgment in consultation with
16 other members of your department?

17 MS. BAER: Objection, based on several
18 grounds. First, it's been asked and answered. Second,
19 Mr. Soldano, I am sure, must be at a frustration point,
20 because the question is always couched and doesn't meet
21 the critical area criteria, and Mr. Soldano is saying,

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1 it's not the critical area criteria we're dealing with.
2 It is exempt from the critical area of law, but we are
3 making them do and meet an environmental standard, a
4 planning standard for protection of the environment.

5 The way that counsel is proposing the
6 question, Mr. Soldano will never be able to answer it,
7 because he has already said he can't make them comply
8 with the critical area criteria because the critical
9 area criteria don't apply. So the way that counsel
10 couches the question makes an answer impossible. And
11 Mr. Soldano has addressed this now at least three
12 times. So, on all of these bases, I object.

13 MR. BLUMENTHAL: Madam Chairman, if I may add
14 my sentiments to that of Ms. Baer, I believe that this
15 line of questioning is el de joindere (phonetic) when
16 did you stop beating your spouse? Any answer is
17 entirely inappropriate because the question is
18 predicated upon a false hypothesis. The question is
19 being asked with the assumption that there is a
20 critical area standard which must be met, and that has
21 not been the testimony of the witness. So any answer

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1 the witness gives, the witness can give no answer, and
2 the design is expressing this frustration.

3 CHAIRPERSON HALE: We'll sustain your
4 objections.

5 BY MR. MURRAY:

6 Q Mr. Soldano, you weren't involved with the
7 department back when the original approval for special
8 exception was granted, were you?

9 A No, I was not.

10 Q I think I heard you testify earlier that
11 property owners within 100 or 175 feet or something
12 like that were notified of that proceeding at that
13 time?

14 A No, that's our current criteria.

15 Q You don't know whether that was the case
16 then?

17 A I don't know for sure that that's the case.

18 Q Do you know even whether there were any
19 dwellings within 175 feet of this property at that
20 time?

21 A I don't have that information, no.

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1 Q Did you give any consideration to reposting
2 or readvertising the property when it came off the
3 sewer allocation list?

4 A That act was not done for any of the
5 subdivisions on the Broadneck waiting list.

6 MR. MURRAY: At this time, I'd like to ask
7 for submittal of this document, Protestants' Exhibit
8 No. 11, into the record.

9 MS. BAER: No objection.

10 MR. BLUMENTHAL: I have no objection.

11 CHAIRPERSON HALE: No. 11 is a letter from
12 Frank Ward to the developer. Is there a date?

13 MR. MURRAY: I believe it's a list of
14 guidelines that was attached to the letter; is that
15 correct?

16 THE WITNESS: Attachment to the letter is
17 correct.

18 CHAIRPERSON HALE: And what is the date,
19 please?

20 MS. BAER: It has a title. It's titled,
21 "Broadneck Subdivision."

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1 MR. MURRAY: Just to clear the record, Mr.
2 Soldano, can you identify the approximate time frame in
3 which that document was generated?

4 THE WITNESS: I believe it was 1989. Let me
5 see if I have the date. I believe it was December
6 15th, 1989.

7 (Whereupon, Respondent's Exhibit No. 11
8 was received in evidence.)

9 MR. MURRAY: That's all the questions I have.
10 Thank you.

11 CHAIRPERSON HALE: Members of the Board.
12 Seeing no questions, you may be excused as a witness.

13 MS. BAER: May I have the opportunity for
14 some redirect?

15 CHAIRPERSON HALE: Yes. I'm sorry.

16 REDIRECT EXAMINATION

17 BY MS. BAER:

18 Q Mr. Soldano, you referred a couple of times
19 to Pine Valley. Is that a subdivision that you also
20 worked on that has some similarity to the current
21 subdivision?

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1 A Yes, it is. It's in the Bay Hills community.
2 It was a townhouse development that was on the waiting
3 list, and they submitted that probably a little before
4 Woods Landing came in.

5 Q And do you happen to have with you a copy of
6 the plat that was finally approved for Pine Valley?

7 A I do have a copy of the site plan.

8 Q And is that a copy of the site plan that you
9 can offer as an exhibit, or is it your only copy?

10 A No, I can offer it as an exhibit.

11 Q May I take a look at that so that we can let
12 counsel look at it?

13 A I have to get it from over here.

14 Q Mr. Soldano, do I understand that this
15 subdivision is just a matter of perhaps a couple of
16 miles from the subject subdivision?

17 A Yes, it is.

18 Q And it is also located on the Broadneck
19 peninsula?

20 A Yes, it's in the Bay Hills community.

21 Q And was it also on the waiting list?

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1 A Yes, it was.

2 Q And were you the project manager for this
3 project?

4 A When it came off the waiting list, yes.

5 Q And can you tell us what your approach was
6 and imposing some additional environmental standards
7 for Pine Valley as it was finally approved?

8 A We again established some minimum criteria,
9 one being storm water management for water quality, a
10 50-foot setback leading in from the water, and a 25-
11 foot buffer to 25 percent slopes. We also -- the site
12 is characterized. It's a little different, and it's
13 characterized by a 100-year flood plain that runs
14 basically along the whole northern edge of the
15 property, which we had them pull the units back off of
16 that and provide at least an average 25-foot buffer to
17 the 25 percent slopes along that portion.

18 Q Did you approach this revised plan in much
19 the same way that you approached the revised plan for
20 Woods Landing Two?

21 A Yes, I did. We looked at it to try to get

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1 the minimum criteria that we felt we could establish.
2 They reduced the density a certain amount and provided
3 the setbacks that we requested.

4 Q And is that project now approved and under
5 construction?

6 A Yes, it is.

7 Q And at the time that this was approved, was
8 Mr. Ward still the development administrator?

9 A Yes, he was.

10 Q And did he generally review or oversee all
11 projects coming off of the waiting list?

12 A Yes, he was the most involved in the
13 discussions prior to the subdivision being resubmitted.

14 Q And he did view this as consistent with the
15 way the office treated subdivisions coming off of the
16 waiting list?

17 A Yes, he did.

18 Q I'm showing you what is labeled "Sheet two of
19 two, the final grading and -- full concept plan of Pine
20 Valley at Bay Hill," and ask if you recognize that?

21 A Yes, I do.

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1 Q And what is this?

2 A This is the approved site plan for Pine
3 Valley, which has been highlighted to show the limit of
4 disturbance in relationship to the 25 percent slopes,
5 which have been shaded for better legibility, and some
6 areas of retention of trees within the site, and, also,
7 the setback that was established to the water.

8 Q And were all of these items addressed as a
9 result of its coming off of the waiting list and being
10 subject to your policy decision that some environmental
11 enhancements would be required prior to final plat
12 signature?

13 A Yes.

14 MS. BAER: I'd like to show this to counsel
15 to present an opportunity to look at it.

16 Madam Chairman, we would ask that this be
17 marked as the County's next potential exhibit. And I'm
18 not real certain that we --

19 CHAIRPERSON HALE: Exhibit 3. You had a
20 resume from Mr. Curtis and Mr. Curtis' report.

21 MS. BAER: That's right. I believe so. I

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1 believe that's correct.

2 CHAIRPERSON HALE: Now, this would be No. 3.

3 Is there any objection?

4 MR. MURRAY: No.

5 MR. BLUMENTHAL: (Shakes head negatively.)

6 CHAIRPERSON HALE: Then this would be the
7 approved plat for the Pine Valley Subdivision?

8 THE WITNESS: The approved site plan, uh-huh.

9 (Whereupon, the document was marked for
10 identification Anne Arundel County's Exhibit No. 3.)

11 BY MS. BAER:

12 Q You have referred, on a number of occasions,
13 to specimen trees and their value. Just for general
14 knowledge, can you tell us what you mean by the term
15 "specimen tree" and why it would be valuable to keep
16 such a tree on the site?

17 A The site visit I spoke of earlier turned up a
18 significant number of specimen trees, and this is a
19 term used for, generally, a tree of 24 inches or larger
20 in diameter that is in good, healthy condition, that it
21 is determined that it can be saved through construction

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1 techniques and will provide, obviously, shade for the
2 units and a more appealing appearance for the
3 subdivision.

4 Q As a planner, in your opinion, is it a
5 significant increase or benefit for a subdivision to
6 maintain its specimen trees?

7 A We try -- the new tree preservation bill
8 that's been in effect for the last several years has
9 language in it that specifies, "30-inch diameter trees
10 or greater must be shown on the site plan and
11 retained." So it's a basic County policy that's been
12 determined that these are site features that should be
13 saved wherever possible.

14 Q And were you able, with this site plan, to
15 maintain specimen trees, whether or not they were
16 within the 150-foot buffer from the water?

17 A Yes. That was part of the thought process,
18 as I said earlier, that went into reducing the buffer
19 to some extent so that trees that were outside the
20 buffer would have been graded out in order for units to
21 be constructed, and could then be saved, and an overall

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1 benefit for the entire site is achieved.

2 MS. BAER: I have no further questions of Mr.
3 Soldano.

4 CHAIRPERSON HALE: Mr. Deuringer.

5 MR. MURRAY: Madam Chairman, I would like to
6 have an opportunity to further cross-examine this
7 witness at an appropriate time.

8 CHAIRPERSON HALE: All right. Mr.
9 Blumenthal, do you have further questions for this
10 witness?

11 MR. BLUMENTHAL: No, I do not.

12 CHAIRPERSON HALE: Mr. Murray.

13 CROSS-EXAMINATION

14 MR. MURRAY: Thank you.

15 BY MR. MURRAY:

16 Q Mr. Soldano, the comparative project that you
17 just described, Piney Creek, is that it?

18 A Pine Valley.

19 Q Pine Valley. How many units in that project
20 were allowed to be constructed within 100 feet of
21 tidewater?

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1 A As I stated earlier, the site is much
2 different. It does run along the extensive 100-year
3 flood plain, so the actual frontage on the water is
4 significantly less. I believe there's only between
5 five and ten, maybe, within 90-foot buffer.

6 I would have to look at the plan again, but
7 the real issue here is that the entire site was
8 characterized by steep slopes and that we were trying
9 to get them to respect those slopes as much as
10 possible.

11 Q So, without looking at the plat, you're
12 saying between five and ten?

13 A Somewhere around five, yeah.

14 Q And how many units are within 100 feet of
15 tidewater on the Woods Landing Two approved plan?

16 A I'd have to pull the plat again to give you
17 an exact number.

18 Q Would you?

19 (Whereupon, the witness located the
20 document as requested.)

21 THE WITNESS: Similarly to -- the 35 to 40

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1 units.

2 BY MR. MURRAY:

3 Q Are there 25 percent or greater slopes in
4 Woods Landing Two?

5 A Yes, there are.

6 MR. MURRAY: That's all the questions I have.
7 Thank you.

8 CHAIRPERSON HALE: All right. Members of the
9 Board. Mr. Deuringer.

10 EXAMINATION BY MEMBERS OF THE BOARD

11 BY MR. DEURINGER:

12 Q Mr. Soldano, if I understood you correctly,
13 you indicated that more specimen trees could be saved
14 with a 50-foot buffer than with a 100-foot buffer. Did
15 I understand you correctly?

16 A That's the determination that was made in the
17 field, yes, and that I took as a recommendation.

18 Q I'm a little bit confused here. If you have
19 a 100-foot buffer, it seems like you'd be able to save
20 more trees than with a 50-foot buffer.

21 A It depends on your definition of the specimen

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1 tree. As I said earlier, we're looking at large-
2 diameter, very tall shade trees that are in good
3 condition. I think if you walk the site, in that 100-
4 foot buffer, you'll find that there are quite a few
5 specimen trees, but there is also a lot of underbrush
6 and, also, some smaller trees. At least this is the
7 recommendation that was made, and that the specimen
8 trees were located on the site plan and shown to be
9 kept as much as they could.

10 Q Okay. You also referred earlier, in response
11 to Mr. Murray, when you said you used a 50-foot setback
12 as a minimum criteria. In listening to you talk about
13 criteria, I take it that criteria is not the criteria
14 in the sense that you have established rules. It's
15 probably something that has evolved out of a procedure
16 in applying that "insofar as possible." Would that be
17 correct?

18 A Well, again, I wouldn't go that far. I think
19 that it's a site-by-site condition, and I think that
20 the 50 feet was established because you have a 25
21 percent slopes within that 50 feet, and a 25-foot

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1 buffer could be established to the steep slopes on the
2 site with a 50-foot setback or more. And the site plan
3 reflects that there are very few cases where the 50
4 foot is actually the setback. It's more the limit of
5 disturbance is 50 feet, and the actual structure is set
6 back 60 feet, and, in some cases, more than that.

7 Q I see. Had you dealt with this particular
8 development before?

9 A Not personally.

10 Q But your office has?

11 A Yes.

12 Q In similar kinds of situations, as far as you
13 know?

14 A I couldn't answer that, to be honest with
15 you, and I wouldn't want to say.

16 Q Okay, fine.

17 A There aren't too many circumstances like
18 this.

19 MR. DEURINGER: All right. Thank you.

20 BY CHAIRPERSON HALE:

21 Q Mr. Soldano, what's the numerical difference

1 of the specimen trees and the 50 foot and the 100 foot?

2 A You mean how many were saved by using that?

3 It's kind of a domino effect. The way the
4 original site plan was approved, if you move the
5 waterfront units back, it affects the layout of the
6 entire interior of the site. So it's not just the ones
7 that were being eliminated by the units that were moved
8 back 100 feet. It would be the domino effect within
9 the site as you changed the rest of the site plan, and
10 it makes harder and harder to not masquerade the site
11 when you're dealing with townhouses.

12 Q What is the numerical difference of specimen
13 trees on the two plans?

14 A A very rough guess would be in the
15 neighborhood of 20 trees.

16 Q In which direction? 20 specimen trees --

17 A Well, we're saving roughly 20 highlighted
18 specimen trees as well as -- I don't have the number of
19 the trees that were being saved on the original site
20 plan.

21 CHAIRPERSON HALE: Thank you.

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1 Any further questions for this witness? Mr.
2 Blumenthal.

3 RECROSS-EXAMINATION

4 BY MR. BLUMENTHAL:

5 Q I just want to clarify, because I think I now
6 understand your answer, and I didn't understand it when
7 a member of the Board asked it.

8 If you were to hold the developer to a 100-
9 foot setback, that would eliminate more specimen trees,
10 assuming the developer kept its density, because the
11 entire project would be pushed back into the interior
12 of the property where there are some specimen trees.

13 A That's correct.

14 MR. BLUMENTHAL: Thank you.

15 CHAIRPERSON HALE: Any further questions for
16 this witness? Mr. Johnson.

17 REEXAMINATION BY MEMBERS OF THE BOARD

18 BY MR. JOHNSON:

19 Q Yeah. Mr. Blumenthal had his question --
20 that was bothering me, too. So that's been answered.

21 This Pine Valley subdivision, you said they

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1 were 35 to 40 units within the 100-foot buffer?

2 A No, I was talking about the Woods Landing
3 Section Two. When there were roughly five, I guess --
4 again, I'd have to see the site plan.

5 Q Well, the Pine Valley subdivision, you said,
6 is much smaller, but the -- how many units are within
7 the 100-foot buffer area? But -- is that the buffer to
8 the Little Magothy, or is that some type of wetland
9 area?

10 A No, it's -- I want to say buffer to the
11 river.

12 Q To the river? Okay.

13 MR. JOHNSON: All right. Thank you.

14 THE WITNESS: Perhaps I should clarify. The
15 purpose of bringing up Pine Valley was, it's a similar
16 townhouse-type subdivision. There are less units along
17 the waterfront, but the same type of criteria, as far
18 as the setback for the units that were along the
19 waterfront in setbacks to the 25 percent slopes were
20 used. And that's really my only purpose in bringing
21 that up is to show that there was similar criteria

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1 used.

2 CHAIRPERSON HALE: Any further questions?

3 You may be excused as a witness, and the
4 Board will take a break.

5 (Whereupon, there was a short recess.)

6 CHAIRPERSON HALE: I'd like to go back on the
7 record. We're back on the record. Ms. Baer.

8 MS. BAER: I call Mr. Elbrich.

9 Whereupon,

10 JOSEPH ELBRICH, JR.,

11 a witness, called for examination by counsel for Anne
12 Arundel County, was duly sworn, and was examined and
13 testified as follows:

14 CHAIRPERSON HALE: Identify yourself for the
15 record, please.

16 THE WITNESS: Joseph John Elbrich, Jr.;
17 address, Box 6675, Annapolis, Maryland 21404, Anne
18 Arundel County Office of Planning and Zoning.

19 CHAIRPERSON HALE: Would you give us the
20 spelling of your last name, please.

21 THE WITNESS: E-L-B-R-I-C-H.

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1 MS. BAER: Mr. Elbrich, have you signed the
2 witness list?

3 THE WITNESS: I have not.

4 MS. BAER: Would you do that for us, please.

5 DIRECT EXAMINATION

6 BY MS. BAER:

7 Q Mr. Elbrich, how long have you been with the
8 Office of Planning and Zoning?

9 A 23 years.

10 Q And what is your current title?

11 A Planning Administrator for the Environmental
12 Division of the Office of Planning and Zoning.

13 Q And prior to that position, what position did
14 you hold?

15 A Planning Administrator for the Design and
16 Development Section of the Office of Planning and
17 Zoning.

18 Q And is that the division which includes
19 subdivisions?

20 A At that time, it included subdivision and
21 building permit review.

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1 Q And prior to that, what position did you hold
2 with Anne Arundel County?

3 A I was a Planner in the Comprehensive Planning
4 Section of the Office of Planning and Zoning.

5 Q Would it be fair to say that in your vast
6 number of years with the County, you've been in just
7 about every planner capacity that the office had at
8 some time or other?

9 A Yes, including involvement with the
10 Enforcement Division for the enforcement of the
11 criteria.

12 Q Mr. Elbrich, have you been qualified as an
13 expert in planning prior to this evening?

14 A Yes, I have.

15 Q Before what bodies?

16 A This body, the circuit courts, the district
17 courts, and the Grand Jury.

18 Q We would offer Mr. Elbrich as an expert in
19 planning.

20 MR. MURRAY: No objection.

21 MR. BLUMENTHAL: No objection.

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1 CHAIRPERSON HALE: We'll accept him as an
2 expert in land planning.

3 BY MS. BAER:

4 Q Mr. Elbrich, are you familiar with the
5 requirements for subdivisions as they come off of the
6 Broadneck waiting list?

7 A Yes, I am, as far as the review process and
8 the approval process that we go through.

9 Q And when you say "we," is that, most
10 specifically, the environmental group over which you
11 supervise?

12 A Yes.

13 Q And is your group tasked to enforce, from a
14 planning perspective, the local critical area program?

15 A Yes, it is.

16 Q And are you familiar with the subdivision
17 which is the subject of this hearing?

18 A Yes, I am.

19 Q What is your understanding as to the
20 applicability of a local program to this subdivision?

21 A The state's critical area law, which was

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1 adopted in 1984, provided for the approval and review
2 of projects submitted after that date. Within it, it
3 provided for a specific exception which was contained
4 in 8-1813 of the State provisions.

5 Q And when you say "the State provisions," are
6 you referring to the Natural Resources article of The
7 Annotated Code of Maryland?

8 A I am, yes. And that exception says that this
9 section, which is a project -- "Prior Project Approval
10 Section" is the title, "does not apply to any
11 application initially filed prior to March the 1st,
12 1984."

13 Q Now, have you put together, perhaps a cut-
14 and-paste copy of that that you just read?

15 A I have.

16 Q Let me show you this document, and ask you if
17 this is a cut-and-paste put-together of 8-1813, from
18 which you just read that language?

19 A It is. I would point out that it begins with
20 the very first small paragraph (a), then goes to the
21 second column, then picks up with the break underneath

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1 column "A" as the following, so that I will draw on it
2 as the sequence of the paragraphs.

3 MS. BAER: Minus the arrows that Mr. Elbrich
4 has just put on that document, I would ask that that be
5 marked as the next sequential exhibit and give copies,
6 as I say, without the arrows, to counsel. And I also
7 have several spare copies so that the Board could have
8 it at their disposal.

9 CHAIRPERSON HALE: And this is 8-1813?

10 MS. BAER: Starting with the critical area.

11 CHAIRPERSON HALE: Any objection?

12 MR. BLUMENTHAL: No objection.

13 MR. MURRAY: No objection.

14 CHAIRPERSON HALE: It's Exhibit 4.

15 (Whereupon, the document was marked for
16 identification Anne Arundel County's Exhibit No. 4.)

17 THE WITNESS: I would point out, in that
18 particular article on the very first paragraph, that it
19 is referring to "specific findings required from June
20 the 1st, 1984, regarding subdivision plat approval or
21 approvals of zoning amendments, variances, special

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1 exceptions, conditional use permits, or uses of the
2 floating zone affecting any land or water located
3 within the initial planning area, which was the
4 critical area boundary line."

5 BY MS. BAER:

6 Q And, in fact, is this property generally
7 within the critical area boundary line?

8 A Yes, it is.

9 Q Drawing your attention to subsection "D,"
10 that is, in the lower right-hand corner of the final
11 paragraph, what does that indicate?

12 A That indicates that the section does not
13 apply to any application initially filed prior to March
14 the 1st, 1984, for which the subdivision of Woods
15 Landing was filed prior to that. It has a subdivision
16 that was initially filed back in 1973 as a sketch plan
17 submittal.

18 Q Now, let's make it very clear. This is not
19 the local program, is it?

20 A No, this is the State criteria and the State
21 law.

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1 Q Now, in addition to this, does the local
2 program exempt the subject subdivision?

3 A Yes. The County and its adoption of 49-88,
4 which was the County's local program, provided for
5 certain exemptions in its criteria, and those are
6 contained in the back of the ordinance dealing in
7 section three, of which there are five specific
8 provisions.

9 Q Have you been here throughout this evening's
10 hearing?

11 A Yes, I have.

12 Q Did you hear Mr. Blumenthal's question to Mr.
13 Soldano in which he read a section to Mr. Soldano,
14 asking him if that section exempted the subject
15 subdivision?

16 A That is correct.

17 Q And is that the section that you understand
18 to exempt the subdivision?

19 A Paragraph four specifically provides for
20 those subdivisions that were placed on the County's
21 waiting list for water and waste water allocation that

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1 have complied with the provisions of bill 42-86 and 90-
2 86 are exempt from this ordinance.

3 Q Now, the critical area local program, was
4 that approved by the State of Maryland?

5 A Yes, it was. One of the requirements under
6 the State law is that the local programs be developed
7 by the local jurisdictions and specifically approved by
8 the Critical Area Commission.

9 Q I'm showing you a document that's dated June
10 10th, 1988, and ask if you recognize that document.

11 A Yes. That is one of the approval letters for
12 the County's Critical Area Program.

13 Q We would ask that this be marked as the next
14 sequential exhibit.

15 CHAIRPERSON HALE: Any objection?

16 MR. MURRAY: None here.

17 MR. BLUMENTHAL: No objection.

18 CHAIRPERSON HALE: Exhibit 5 will be the June
19 10th, 1988 approval letter from the State re the Anne
20 Arundel County critical area law.

21 (Whereupon, the document was marked for

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1 identification Anne Arundel County's Exhibit No. 5.)

2 BY MS. BAER:

3 Q Now, in the approval process, was there
4 dialogue with a panel of the commission to address each
5 locale's critical area program?

6 A There was dialogue with the panel as well as
7 the staff of the Critical Area Commission for the
8 review of compliance with the State criteria of the
9 State law.

10 Q To your personal knowledge, was the exception
11 for the Broadneck waiting list specifically addressed
12 with that panel and with staff of the critical area?

13 A To my knowledge, it was, because it was
14 dealing with, also, the related issue of growth
15 allocation, in which we specifically had to address
16 what was excluded and what was exempted from our
17 counting of growth allocation.

18 Q And I will show you a copy of a letter dated
19 October 11, 1988, and ask you if growth allocation was
20 a part of the consideration in this letter?

21 A Yes, it was. The first letter did indicate

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1 that we were approved subject to the issue and the
2 methodology used for the calculation of growth
3 allocation. The October, '88 letter indicated that we
4 were approved, and both of these, I think, were by
5 unanimous vote of the Critical Area Commission.

6 The October 11th letter indicates 15 to zero,
7 indicating that our growth allocation calculations for
8 Anne Arundel County were 58 acres designated for
9 resource conservation area, and 102 acres designated
10 for limited development area, and an 11-acre area of
11 growth allocation for the City of Annapolis.

12 Q And did that, from your personal knowledge,
13 also include a discussion of this waiting list?

14 A To my knowledge, it did.

15 Q We ask this be marked as the next sequential
16 exhibit. I believe it's County 6.

17 CHAIRPERSON HALE: Any objection?

18 MS. BAER: I don't know if we have -- yes, we
19 have some more copies.

20 THE WITNESS: We have copies of both letters
21 attached together as a single handout packet.

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1 CHAIRPERSON HALE: This is a letter from the
2 State to the County?

3 THE WITNESS: Both of those were letters from
4 the State Critical Area Commission, one addressed to
5 Tom Osborne, planning officer. The second, dated
6 October the 11th, addressed to The Honorable James
7 Lighthizer, both of them signed by Solomon Liss, who
8 was the chairman of the Critical Area or Chesapeake Bay
9 Critical Area Commission.

10 CHAIRPERSON HALE: Any objection?

11 MR. BLUMENTHAL: No objection.

12 MR. MURRAY: No objection.

13 CHAIRPERSON HALE: Exhibit 6 is the State's
14 letter to Anne Arundel County of October 11, 1988, re
15 growth allocation.

16 (Whereupon, the document was marked for
17 identification Anne Arundel County's Exhibit No. 6.)

18 BY MS. BAER:

19 Q Is it the charge of your office to review
20 subdivisions for environmental concerns?

21 A Yes, it is.

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1 Q And did your office staff, in fact, review
2 the subject subdivision?

3 A Yes. Penny Chalkley, in particular, who was
4 before me, giving testimony with respect to that
5 review.

6 Q And have you subsequently reviewed the
7 environmental enhancements that were placed upon the
8 final approval of this subdivision?

9 A Yes.

10 Q Do you have an opinion as to whether those
11 enhancements significantly improved this subdivision
12 from its prerevised state to its contraproved
13 (phonetic) state?

14 A Yes, it did.

15 Q There has been much discussion this evening
16 about the words "insofar as possible." Is it your
17 understanding that in the context of a subdivision
18 coming off of the waiting list, the "insofar as
19 possible" standard, is that standard which is
20 incorporated in the text of the local plan?

21 A With respect to the exemption provisions,

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1 yes, to the extent that it was an environmental
2 enhancement that was imposed via the letter of Frank
3 Ward to try to achieve those standards as much as they
4 could possibly achieve in the -- bringing them in for
5 final recordation signature.

6 Q Is it your understanding that this "insofar
7 as possible" is a legal requirement or a requirement
8 that was imposed by the then subdivision administrator?

9 A An imposition by the administrator of the
10 subdivision, division, and the director of the office.

11 Q To the best of your knowledge as a supervisor
12 for the environmental planners, would you say that the
13 approach used in this case is similar to approaches
14 used in similar cases?

15 A Yes. We have a specific group of
16 subdivisions, both major and minor, which were in this
17 category which we have applied as they have gone
18 through the same standards of trying to meet and
19 enhance the environmental benefits of the subdivision
20 without requiring massive redesign.

21 MS. BAER: I have no further questions of Mr.

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1 Elbrich at this time.

2 CHAIRPERSON HALE: Mr. Blumenthal.

3 MR. BLUMENTHAL: No questions.

4 CHAIRPERSON HALE: Mr. Murray.

5 CROSS-EXAMINATION

6 BY MR. MURRAY:

7 Q Mr. Elbrich, turning your attention to
8 8-1813, the statute that you first referenced. Do you
9 have that in front of you?

10 A Yes.

11 Q The section that you, I believe, called
12 attention to is "D" subsection --

13 A Correct.

14 Q And it reads, "This section does not apply to
15 any application officially filed prior to March 1,
16 1984," correct?

17 A Correct.

18 Q Are you familiar with section 8-1811 of the
19 same statute?

20 A Not by number off the top of my head. I have
21 a copy of the article, if you would like for me to look

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1 at --

2 Q My question is, are you generally familiar
3 with it?

4 A Not by number.

5 Q All right. It's the section called "Project
6 Approval."

7 A The section or the definition?

8 Q The section.

9 A The section? Generally, yes.

10 Q Are you familiar with the provision within it
11 which is at (a), that "from the effective date of a
12 program approved by the Commission, project approval
13 involving land located in the critical area may not be
14 granted unless the project approval is consistent and
15 complies with the program"?

16 A Uh-huh.

17 Q The letter that was admitted as Exhibit 6 to
18 Mr. Thomas Osborne from Solomon Liss, who is Mr.
19 Osborne?

20 A Mr. Osborne, at that time, was the Director
21 of the Planning and Zoning Office. He was the Planning

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1 and Zoning officer.

2 Q And who heads that division today?

3 A Ardeth M. Cade.

4 Q And who is the chairman of the Critical Areas
5 Commission today?

6 A Judge North.

7 Q In the normal course of your role, do you
8 have knowledge of communications such as Exhibit 6
9 between the chairman of the Critical Areas Commission
10 and Ms. Cade?

11 A Yes.

12 Q I'm showing you a letter and attachment dated
13 April 29th, 1992, from Judge North to Ardeth Cade. Do
14 you recognize that document?

15 A Yes, I do.

16 Q And is your office familiar with its
17 contents?

18 A Yes, we are.

19 Q Does it pertain generally to the Critical
20 Area Commission's oversight of the Anne Arundel County
21 critical area program?

1 A To the oversight and to the required four-
2 year update and issues that are set forth there that
3 have to be addressed in that update.

4 Q And, among the issues contained in that
5 update, for a grandfather?

6 A Yes.

7 MR. MURRAY: I'd like to mark this Exhibit --

8 MR. BLUMENTHAL: Objection to it being taken
9 as evidence. I believe this is the same letter that
10 was attempted to be proffered by counsel and to which
11 there is an objection, and the objection was sustained
12 by this Board.

13 MS. BAER: I further would object. I believe
14 that Mr. Blumenthal is correct, that it is the very
15 same letter.

16 But, just on a basis of what has been
17 proffered here as a foundation, is that it concerns
18 grandfathering, and this case clearly does not concern
19 grandfathering. This is a clear exception. The
20 testimony has been clearly that this subdivision is
21 excepted.

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1 It's a clear exception to the law, and not a
2 grandfathered subdivision. It is derived from a
3 different section of the law. It's applicability does
4 not come from the grandfathering clauses. This goes
5 back to that "insofar as possible." This goes back to
6 counsel's questions of Mr. Soldano of how close to the
7 criteria did it get? Well, you can't answer that,
8 because the criteria don't apply. So the foundation is
9 saying, "Well, it has to do with grandfathering," and
10 this is the mark. It has nothing to do with this case.

11 CHAIRPERSON HALE: Mr. Murray, how do you
12 believe this letter is now admissible through this
13 witness?

14 MR. MURRAY: Well, first, I would like to
15 have it marked, and if we can get beyond that, then I'd
16 like to address the substantive issues of why --

17 MR. BLUMENTHAL: I have no problem with it
18 being marked for purposes of identification only, but
19 not that it be received as an exhibit upon which the
20 Board can rely, at least at this juncture.

21 CHAIRPERSON HALE: We'll have it marked for

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1 identification.

2 (Whereupon, the document was marked for
3 identification Protestants' Exhibit No. 12.)

4 MR. MURRAY: Now, the reason I think it's
5 admissible, which I was going to get to, is that this
6 witness has already presented testimony about the
7 Critical Areas Commission's approval of the local
8 programs upon which his testimony is based. He
9 supported his testimony with letters to the prior
10 Planning Officer from the prior Chairman of the
11 Critical Areas Commission addressing the substance and
12 approval of the local programs.

13 This letter is a more recent letter, also
14 addressed to the now Planning Officer of Anne Arundel
15 County by the now -- from the now Chairman of the
16 Critical Area Program. And within the letter, I would
17 proffer are many subjects. Among them are subjects
18 dealing with the exemptions of certain subdivisions
19 from the County critical area ordinance as well as
20 grandfathering.

21 Now, I submit to you that it will be

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1 ultimately your decision to make, what category applies
2 in this case. It seems to me that it would be
3 premature for you as an evidentiary to decide whether
4 there is anything in this or not that will apply to
5 your ultimate decision.

6 Certainly, there are points within this
7 letter and the attachment which deal with the subject
8 of exemption and grandfathering. I will -- for
9 relevance to this case and bear --. That's why I think
10 it should be admitted.

11 CHAIRPERSON HALE: Mr. Blumenthal.

12 MR. BLUMENTHAL: Madam Chairman, the very
13 same argument was made when this document was proffered
14 as an exhibit on a prior occasion. Contained within
15 the document are suggestions for considerations and a
16 dialogue, almost a colloquy, if you will, in a
17 narrative fashion, between the chair of the Critical
18 Area Commission and the now Director of the Office of
19 Planning and Zoning of Anne Arundel County.

20 Unlike the letters which have been submitted
21 through the testimony of Mr. Elbrich, this is not a

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1 letter of approval or a letter of disapproval. It is
2 merely a letter saying your four-year revision, that
3 you should consider various items and various matters.
4 It would be improper for this Board, in my judgment, to
5 infer anything, either good or bad, towards either
6 position stated in these proceedings. This letter is
7 not of probative value of anything. It is not an
8 approval. It is not a denial.

9 The other letters are approval letters by
10 which the plan of Anne Arundel County was approved by
11 the State of Maryland Critical Area Commission. The
12 very same argument was previously advanced. The very
13 same discussion and objection by counsel was made, and
14 this Board, at that time, said that the letter was not
15 of probative value because it didn't add anything.

16 And so I restate the objection on the very
17 same reasons.

18 CHAIRPERSON HALE: Ms. Baer, would you like
19 to speak to this?

20 MS. BAER: My comments would be redundant
21 from what Mr. Blumenthal has already said, that the

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1 Board has previously ruled on this document. It does
2 not seem to me that any better foundation is here now
3 than what -- the last time on it.

4 CHAIRPERSON HALE: The Board has letters from
5 the State to the County about the critical areas law
6 and how it impacts on the County, and, at this point,
7 we'll take this letter in and see if it has any bearing
8 on this case. That would be Protestants' Exhibit 12,
9 the letter from Judge North to Ardeth Cade of April 29,
10 1992.

11 (Whereupon, Protestants' Exhibit No. 12
12 was admitted in evidence.)

13 MR. MURRAY: That's all my questions.

14 CHAIRPERSON HALE: Members of the Board.

15 Any questions for this witness? Ms. Baer.

16 MS. BAER: Yes, I have several on redirect.

17 REDIRECT EXAMINATION

18 BY MS. BAER:

19 Q Mr. Elbrich, are you now a sitting member of
20 the Critical Area Commission?

21 A I am.

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1 Q And are you aware of the process for a four-
2 year review, that it is made of all critical area
3 programs?

4 A In general, yes.

5 Q And to the best of your -- have you, in fact,
6 dealt with Judge Norris as well as Dr. Sarah Taylor
7 regarding this particular letter?

8 A Yes.

9 Q And what is Dr. Taylor's position with
10 critical areas?

11 A Dr. Taylor is the Executive Director for the
12 Chesapeake Bay Critical Area Commission.

13 Q And from your communications with both Judge
14 North and Dr. Taylor, what do you understand this April
15 letter to be?

16 A To be an issue statement letter of areas
17 where they have found problems, consistencies, unclear
18 provisions that are felt to be inconsistent with
19 criteria that need a justification, an explanation, and
20 a possible change.

21 Q Now, is Anne Arundel County the only county

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1 that's going through this process?

2 A No.

3 Q Do you know of other counties that are doing
4 this?

5 A Yes.

6 Q And, in fact, is it not required for all
7 jurisdictions, whether counties or other incorporated
8 municipalities, to go through this process?

9 A Correct. Everyone who has had to submit a
10 critical area program within the four-year period after
11 their effectiveness, they must come in for an update.

12 Q And has the office been, in fact, engaged in
13 a systematic review of all of the questions put forth
14 in that April letter?

15 A Correct. As a part of our critical area
16 update, we have established a Citizen Advisory
17 Committee, consisting of developers, environmental
18 groups, citizen groups representing the entire area of
19 the County, to give us advice and recommendations, and
20 we have specifically been discussing the issues set
21 forth in preparation for the submission of the critical

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1 area update to the County Executive, the County
2 Council, and the Critical Area Commission for its
3 approval.

4 Q And, in fact, Mr. Elbrich, are you aware of
5 any instances where the State has used its authority to
6 specifically address inconsistencies in other
7 jurisdictions by way of mandatory action?

8 A Yes. An action was taken with respect to
9 Queen Anne's County by the Critical Area Commission to
10 require that that county change certain provisions
11 within its critical area operation.

12 Q And was any such mandatory action taken
13 toward Anne Arundel County?

14 A No, none has been taken to date.

15 Q And in your discussions with Dr. Taylor and
16 Judge North, is it your understanding that the April
17 letter that has been admitted is a talking piece?

18 A Correct.

19 Q Now, also, in your capacity both -- wearing
20 both hats, both as the Director of the Environmental
21 Section and the Office of Planning and Zoning, and,

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1 also, as a member of the Critical Area Commission, are
2 you familiar with Protestants' Exhibit No. 3? I'll
3 show you a copy of that.

4 A Yes. This was a letter that was sent by
5 Judge North to Michael Hoffman. We did not receive a
6 copy of that particular letter. The first I heard of
7 it was when it was introduced as evidence here.

8 Q And did you subsequently confirm from the
9 records of the Critical Area Commission that this
10 letter was indeed a letter that issued -- as
11 represented as Protestants' 3?

12 A Yes, I did. I asked for a copy of the
13 original letter and a copy of the response that was
14 prepared.

15 Q And did you find, among the records of the
16 Critical Area Commission, a copy of a letter on Sierra
17 Club stationery, dated January of this year, regarding
18 the subject appeal?

19 A Yes. A copy of that was faxed to me at my
20 request.

21 Q And what -- to summarize, what was the

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1 request that was addressed to Judge North in that
2 January 23 letter by Mr. Hoffman of the Sierra Club?

3 MR. MURRAY: Objection.

4 CHAIRPERSON HALE: Basis?

5 MR. MURRAY: Hearsay. That has nothing to do
6 with anything, what he's testified about.

7 MS. BAER: Madam Chairman, I beg to differ.
8 First of all, it's not hearsay. It's a document out of
9 the Critical Area Commission file, and this gentleman
10 is a member of the Critical Area Commission. I don't
11 know how that could possibly be hearsay.

12 MR. MURRAY: Is he testifying on behalf of
13 the Commission?

14 MS. BAER: Second, it's -- he doesn't have to
15 be in order to be -- for this to be a true document out
16 of the file.

17 Second, how we can say that it is not
18 relevant is beyond me, when we have now admitted a
19 letter saying this is the position of the Critical Area
20 Commission, when here we have an inquiry where
21 Protestants has already put in the response from the

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1 Critical Area Commission, but you never knew what the
2 question was.

3 And in order to give this document its weight
4 in light of the April letter, it seems to me that we
5 need to have the question asked.

6 CHAIRPERSON HALE: And this is a redirect,
7 and this did not come up in cross-examination, so we
8 can't deal with it in redirect.

9 MS. BAER: With respect to that law, I
10 believe that it is pertinent for redirect is because of
11 the production and admission of the April letter. The
12 April letter puts forth what counsel says are the
13 representations of the Critical Area Commission as
14 what's perhaps wrong with the program.

15 Protestants' Exhibit No. 3 is a response from
16 Judge North to a Mr. Hoffman of the Sierra Club,
17 indicating certain language about what is the
18 applicability, what is the right thing for the law in
19 Anne Arundel County?

20 So we now have two documents that have been
21 admitted by -- through Protestants -- by protestants,

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1 two protestants' exhibits dealing with what the
2 Critical Area Commission thinks is right or wrong with
3 the Anne Arundel County program.

4 What I submit to you, Madam Chairman and
5 members of the Board, is that, standing by itself, this
6 letter had a certain amount of probative value,
7 whatever it may have been. And it went to the issue of
8 what the critical area program -- critical area
9 authorities thought of the County's program vis-a-vis
10 this case.

11 We now have another document that's been
12 entered that goes to that same question. At this
13 point, it becomes necessary to know what the question
14 was, because now we have the April letter, which this
15 Board had previously denied as an exhibit, has now let
16 in, and I believe has opened the door for further
17 evidence of what the Critical Area's position is on
18 these issues.

19 I proffer to the Board that the content of
20 the letter that required Protestants' 3 as a response
21 will make clear the Critical Area Commission's position

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1 as to the integrity of the program and the reliability
2 of the program, which is now an issue because of the
3 April letter. They both go to the same issue, and what
4 I'm saying is, you can't have one without the other to
5 have an understanding of what's going on here.

6 MR. BLUMENTHAL: Madam Chairman, if I may be
7 heard, just to attempt to short-circuit the proceeding,
8 irrespective of how the Board would rule, and assuming
9 arguendo that the Board would rule that it is improper
10 or inappropriate to accept this letter at this time, I
11 have the right of rebuttal, and I would rebut
12 Protestants' 3, Exhibit No. 3, by calling Mr. Elbrich
13 and asking him the very same question, "Is this the
14 letter that generated Protestants' 3," which would be
15 perfectly proper, and if you want to wait till my
16 rebuttal, I will call Mr. Elbrich.

17 This came as a Protestants' exhibit after my
18 case. I have had no chance to rebut it. I have not
19 perceived Mr. Elbrich to talk about it, so I couldn't
20 cross-examine him on it. He's not my witness. He's
21 County's witness, although the County is now saying

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1 that because, after the fact, you have allowed it on
2 his cross-examination correspondence to come in, it's
3 appropriate to allow this correspondence to come in.

4 I understand what the County is saying. I
5 understand what counsel for the protestants is saying.
6 I suggest to you and counsel there, that it's going to
7 come in one way or the other.

8 CHAIRPERSON HALE: All right. If it's going
9 to come in through you later, we may as well let it in
10 now. And it would then be County's Exhibit No. 7, a
11 letter of January of '92 from the Sierra Club to Judge
12 North.

13 (Whereupon, the document was marked for
14 identification Anne Arundel County's Exhibit No. 7, and
15 was admitted in evidence.)

16 MS. BAER: I want to make sure the counsel
17 has had an opportunity to look at it.

18 CHAIRPERSON HALE: Have you concluded?

19 MS. BAER: No. I do have several further
20 questions.

21 .

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1 BY MS. BAER:

2 Q Mr. Elbrich, from your discussions with the
3 staff and Dr. Taylor and Judge North, is it your
4 understanding that at least some of the issues raised
5 in the April, 1992 letter are resultant from inquiries
6 such as this letter dated January 23rd from the Sierra
7 Club, which have brought certain issues to the
8 attention of the Critical Area Commission?

9 A That is correct.

10 Q And, in fact, have you or your office invited
11 members of the Critical Area Commission and its staff
12 to join in and participate with the Citizens Advisory
13 Group regarding the review, the four-year review of the
14 local program?

15 A Yes. Their participation, as well as the
16 panel who will sit in the evaluator program, have been
17 requested to be present at our next meeting, which is
18 September the 26th, to discuss the various issues that
19 were presented both as a result of the review of the
20 programs and issues that were brought to the
21 Commission's attention as this particular case has.

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1 Q And to this date, has there been a resolution
2 of those issues between the County and the critical
3 area?

4 A There has been an agreement to modify and/or
5 make changes to certain of the issues. There has not
6 been a final recommended piece of legislation, but a
7 willingness to indicate some changes will be made in
8 some areas.

9 Q And, in fact, the entire program review is
10 still under the discussion process?

11 A That is correct, with the final decision
12 being made by the County Executive as to what his
13 anticipated be proposed for legislation, which will be
14 his decision.

15 MS. BAER: I have no further questions of
16 this gentleman.

17 CHAIRPERSON HALE: Members of the Board. Mr.
18 Blumenthal.

19 MR. BLUMENTHAL: I have no further questions.

20 CHAIRPERSON HALE: Any further questions for
21 this witness? Being none, you may be excused as a

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1 witness.

2 THE WITNESS: Thank you.

3 MS. BAER: That's the County's case.

4 CHAIRPERSON HALE: Mr. Blumenthal, rebuttal.

5 MR. BLUMENTHAL: Not at this time, no.

6 CHAIRPERSON HALE: Are there any other
7 protestants in the room who wish to testify about this
8 case? Would you come forward and identify yourselves
9 for the record.

10 MR. BRADLEY: My name is Earl Bradley. I am
11 representing the Anne Arundel group of the Sierra Club,
12 and I have some written testimony I'd like to submit
13 and then briefly summarize for you.

14 MR. BLUMENTHAL: I would object to this
15 gentleman testifying unless he has some authorization
16 to. I have no objection to testifying as an
17 individual. Do you have some kind of authorization,
18 authorizing you to --

19 MR. BRADLEY: I explicitly asked the Board of
20 Appeals if I needed written authorization. They said I
21 did not need written authorization. My testimony has

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1 been approved by the Executive Board of the Anne
2 Arundel group as well as identified as one of the major
3 issues of the group members in a poll we took this
4 spring.

5 CHAIRPERSON HALE: You could cross-examine
6 him on what he has to say.

7 MR. BRADLEY: Let me -- if I may just take a
8 minute to put my address here.

9 CHAIRPERSON HALE: Would you raise your right
10 hand, please.

11 Whereupon,

12 EARL BRADLEY, JR.

13 a Protestant, was duly sworn, and was examined and
14 testified as follows:

15 CHAIRPERSON HALE: Please give us your name
16 and address for the record.

17 THE WITNESS: My name is Earl H. Bradley, Jr.
18 My address is 2629 Greenbrier Lane, Annapolis, Maryland
19 21401.

20 CHAIRPERSON HALE: You may proceed.

21 THE WITNESS: Although I was involved

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1 professionally in the involvement of the program
2 development criteria, which local jurisdictions were to
3 use in the development of the Chesapeake Bay critical
4 area programs, and I was the program development
5 director for half the County's Chesapeake Bay critical
6 area program, and I participated in the review of
7 proposed local critical area programs in professional
8 basis regarding the adequacy, I'm here tonight on a
9 personal basis representing the Anne Arundel group of
10 the Sierra Club.

11 The group is opposed to Anne Arundel County's
12 approval of Woods Landing Two and its proposed density
13 and its proposed configuration for several reasons.

14 First, we believe, as previously stated, from
15 the Critical Area Commission and in a news article in a
16 newsletter -- in a letter to the County which was
17 previously entered into testimony, that the County's
18 grandfathering of projects in general had notes on the
19 water and sewer allocation listed in particular, is not
20 consistent with the critical area program development
21 criteria relating to grandfathering noted in COMAR

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1 14150207.

2 Furthermore, the provision 49-88 to the
3 County asserts exempts referring to and actually really
4 does not apply to. This -- refers to only proposed
5 subdivisions that were placed on the waiting list for
6 one original allocation that have complied with
7 provisions of 42-86 and 90-86.

8 No action was taken on Woods Landing Two in
9 accordance with the provisions of those bills which
10 were entering provisions in which projects were
11 revealed during the time the County's critical area
12 program was approved.

13 Second, it should be noted that the County
14 submitted, as parts of this critical area program, for
15 approval by the Chesapeake Bay Critical Area
16 Commission, two other components in addition to the
17 legislation. One, a critical area program described in
18 text the various elements of the program; and, two,
19 maps delineating the various designations in which the
20 County's Chesapeake Bay critical area was to be
21 divided: resource conservation area, newly development

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1 area, and density development area.

2 The portion of the critical area in which
3 Woods Landing Two was proposed was mapped as LDA. That
4 designation means that the density of the existing
5 development of that which would incur the future is not
6 -- four units by acre. The proposed density in Woods
7 Landing Two is over 50 units on 32 acres, which exceeds
8 that density and thus is contrary to the maps submitted
9 to the Critical Area Commission's part of the County's
10 critical area program.

11 Third, even if Woods Landing could be
12 considered as grandfather, this present configuration
13 cannot be considered as meeting the County's
14 commitments, but that such developments will comply
15 with this critical areas program -- insofar as
16 possible.

17 In addition to exceeding the -- density for
18 the LDA designation shown on the -- designation map,
19 Woods Landing Two does not even comply with the
20 mandatory provisions of COMAR 14150270 relating to the
21 protection of habit protection areas, which are to be

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1 followed whether or not a project is grandfathered, and
2 much less attempting to address the other requirements
3 of COMAR 1502, the greatest end possible.

4 Several parts of COMAR 141509, relating to
5 habitat protection area, are pertinent to Woods Landing
6 Two. The first and natural buffer of at least 100 feet
7 -- must be retained adjacent to tidewaters, tidal
8 wetlands, tributary streams.

9 The points of maintaining such a buffer is
10 not just to litigate the impacts of surface runoff as
11 been previously testified, but, equally is important to
12 renew nutrient loadings in groundwater flows and to
13 provide shore and plant wildlife habitat.

14 Second, we are threatening endangered species
15 in the habitat and are to be protected.

16 Third, nontidal wetlands and adjacent 25-foot
17 buffer are to be left undisturbed. Fourth, the --
18 forest areas defined as those relatively mature forests
19 of at least 300 feet in width which occur adjacent to
20 streams, wetlands in the bay shore, are to be protected
21 and conserved by developing nature programs that has as

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1 their objective conserving wildlife and habitat --
2 area. Suggest the management measures that cost of the
3 developing on the edge of such areas to continue
4 integrity.

5 Finally, the proposed -- and impervious
6 surface significantly -- that 15 percent allowed by
7 State law which presumably takes precedence over local
8 laws. That's -- issue to overturn the County's
9 approval of Woods Landing Two in regard to its
10 configuration and more environmentally -- with less
11 density, less impervious surface, -- forest cover
12 retention, and expanding natural buffer adjacent to
13 Little Magothy River, its tidal wetlands and its
14 tributary streams.

15 I have copies of my testimony I'd like to
16 submit, if possible.

17 CHAIRPERSON HALE: Any objection to him
18 submitting --

19 MR. BLUMENTHAL: So long as the textual copy
20 which is being submitted comports exactly with that
21 that has been spoken, I have no objection. I would

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1 object to any deviation.

2 CHAIRPERSON HALE: Did you read the text
3 exactly as it was written?

4 THE WITNESS: 99 percent.

5 MR. BLUMENTHAL: I object to the one percent,
6 whatever it is. I don't mean to -- I just don't want
7 to --

8 THE WITNESS: I don't think I said anything
9 -- I told something that's different than what's in
10 there. I did not go word for word.

11 MR. BLUMENTHAL: If there's no subject to
12 change, then I obviously have no objection. I just did
13 not want to allow into the record written text which
14 differs materially in any way so I don't have to burden
15 the Board by asking for a recess to read this.

16 MS. BAER: I would only, for the record,
17 object to the submission insofar as an attachment is a
18 copy of the April 29, 1992 letter which heretofore was
19 admitted over objection. It would be inconsistent for
20 me to say, and I think that there is no more sense now
21 than there was earlier to admitting it. So I would say

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1 that I have no objection, except for the April 29, 1992
2 attachment, for the purpose of the record.

3 MR. BLUMENTHAL: And I stand corrected, too.
4 I didn't realize that there was a letter attached to
5 this that was not testified to by the witness. That's
6 the reason why I threw in my blanket objection, but the
7 Board's already accepted it. So if you take it a
8 second time --

9 CHAIRPERSON HALE: I admitted it. It's
10 already in. We will note both your objections and --

11 MS. BAER: There is a second attachment
12 called the "Critical Area Chronicle." I have no
13 absolutely no familiarity with this document. It
14 appears to be a copy of a newsletter put out by the
15 Critical Area Commission.

16 CHAIRPERSON HALE: Ms. Anthony, can you just
17 take those attachments off, and we'll admit the
18 testimony as written and read.

19 And that would be the Protestants' --

20 MR. MURRAY: I don't represent this client,
21 obviously, but his testimony did incorporate, by

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1 reference, specifically the attachments. He's read it,
2 and it's contained in the text, why those attachments
3 are in there. They're not unrelated, and he hasn't
4 failed to address the point of having them there --

5 MR. BLUMENTHAL: Madam Chairman, if the
6 witness were to attempt to read the attachments, I
7 would object, and I think I would be sustained. At
8 least I hope I would. His testimony is clearly
9 relevant, and it's the convenience of the Board to have
10 it in writing. But this is -- I'm surprised. I didn't
11 take the time to read it. There's a map attached,
12 there's something else attached. As Ms. Baer
13 indicates, we don't know what it is. If he wants to
14 testify to it or attempt to, fine. Then we'll cross-
15 examine him at length.

16 CHAIRPERSON HALE: We're just going to let in
17 the written comments, and you can cross-examine him on
18 the written testimony as submitted.

19 (Whereupon, the document was marked for
20 identification Protestants' Exhibit No. 12, and
21 admitted into evidence.)

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1 CHAIRPERSON HALE: Mr. Blumenthal.

2 CROSS-EXAMINATION

3 BY MR. BLUMENTHAL:

4 Q Is it fair to say that the organization which
5 you are here this evening representing is opposed to
6 the exemption provisions adopted by Anne Arundel
7 County?

8 A Yes.

9 Q Having that in mind, what other approvals of
10 subdivisions on the sewer allocation waiting list have
11 you followed or participated in in Anne Arundel County?

12 A This is the first one we were made aware of
13 which was substantially not following the habitat
14 protection areas in the criteria grandfathering clause.
15 We were not aware that the County was approving
16 projects which did not at least keep a 100-foot buffer
17 on projects that were approved after the program's
18 approval. This is the first one that came to our
19 attention. That's why we have addressed this issue.

20 Q From listening to the testimony this evening,
21 are you now aware that there are other projects that

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1 received similar treatment from Anne Arundel County?

2 A Yes.

3 MR. BLUMENTHAL: I have no further questions.

4 CHAIRPERSON HALE: Mr. Murray.

5 MR. MURRAY: No questions.

6 CHAIRPERSON HALE: Ms. Baer.

7 MS. BAER: No questions.

8 CHAIRPERSON HALE: Members of the Board.

9 Being no further questions, you may be
10 excused as a witness.

11 MR. GUTMAN: I have a letter from the Magothy
12 River Association.

13 CHAIRPERSON HALE: Raise your right hand,
14 please.

15 MR. GUTMAN: I beg your pardon.

16 Whereupon,

17 JAMES E. GUTMAN,
18 a Protestant, was duly sworn, and was examined and
19 testified as follows:

20 CHAIRPERSON HALE: Please give us your name
21 and address for the record.

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1 THE WITNESS: My name is James E. Gutman. I
2 reside at 233 Wiltshire Lane in Severna Park.

3 CHAIRPERSON HALE: You may begin.

4 THE WITNESS: I have a letter authorizing me
5 to speak on behalf of the Magothy River Association.

6 Very briefly, the Magothy River Association
7 became aware of the project that is under discussion
8 here, and although we are not attorneys, we certainly
9 have some feeling about the -- of what -- the approval
10 that was given by the County for Woods Landing Number
11 Two.

12 Our feelings were discussed largely in light
13 of our understanding of what was intended by the
14 critical area law. We made a buffer around the bay
15 which would in many aspects be preserved and protected
16 where it would be a habitat area. Overall, that is our
17 understanding of what was intended by the legislation
18 from the various criteria that had been developed in
19 conformance with that legislation.

20 So our feeling is that, in the case of Woods
21 Landing Number Two, there are two elements that disturb

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1 us greatly. One is the application of the provision of
2 grandfathering that seems to exempt this project from
3 all provisions within the critical area legislation at
4 both the State and the County level.

5 Secondly, we think there is an abuse of the
6 use of "insofar as possible." Listening to the
7 testimony, at no time did I hear, for example, that
8 another configuration of this development would have a
9 number of units significantly less than what has been
10 provided and approved by the County. I think there's a
11 number such as 140 item here, for example, where this
12 would have been possible had there been 125 units.

13 So the "insofar as possible" provision, I
14 think, is being misapplied, because they have not
15 looked at all other potential design arrangements.

16 So I would ask of this Board to overrule the
17 position of the County in this regard, and take very
18 due notice of provisions in the future when we do some
19 revision which will address many of the problems here
20 tonight. That's ahead; has nothing to do with this
21 case; but certainly we have recognized at the

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1 Commission that there are deficiencies in Anne Arundel
2 County's program as well as other counties.

3 I thank you.

4 CHAIRPERSON HALE: Mr. Blumenthal.

5 CROSS-EXAMINATION

6 BY MR. BLUMENTHAL:

7 Q Mr. Gutman, you said, "We have recognized at
8 the Commission." Are you a member of the Critical
9 Areas Commission?

10 A I am.

11 Q How long have you been a member?

12 A I think it's roughly eight years, or at least
13 since the beginning of the appointments of the members
14 to the Commission.

15 Q Were you then one of the 20 people who
16 approved the Anne Arundel County local program?

17 A I was one of those people. In fact, I was a
18 member of the panel review of the Anne Arundel County
19 program.

20 MR. BLUMENTHAL: All right. Thank you. I
21 have no further questions.

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1 CHAIRPERSON HALE: Mr. Murray.

2 BY MR. MURRAY:

3 Q Mr. Gutman, despite having approved the
4 program previously, do you now believe that there are
5 items in it inconsistent with the State law?

6 A Indeed.

7 MR. MURRAY: That's all I have.

8 CHAIRPERSON HALE: Ms. Baer.

9 BY MS. BAER:

10 Q Mr. Gutman, are you testifying tonight on
11 behalf of the Magothy River Association or the Critical
12 Area Commission?

13 A Oh, I beg your pardon. I should have said at
14 the outset -- that nothing that I'm saying here tonight
15 is to be construed as coming forth as a position of the
16 Commission. I'm speaking solely as a representative of
17 the Magothy River Association Board of Governors. And
18 I should have said that earlier, and I apologize.

19 MS. BAER: I have no further questions of Mr.
20 Gutman.

21 CHAIRPERSON HALE: Members of the Board. Mr.

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1 Lamartina.

2 EXAMINATION BY MEMBERS OF THE BOARD

3 BY MR. LAMARTINA:

4 Q Mr. Gutman, these letters were circulated by
5 the Board members, specifically County Exhibits 5 and
6 6. They were letters from the Critical Area
7 Commission, one which I believe approved the County
8 program, I think, which was a letter of 6/10, and,
9 then, the letter of 10/11/88 from the Commission.

10 Supposedly there was a discussion, and if I
11 understand the County witness correctly, at sometime
12 prior to that letter being sent that dealt with
13 consistencies with regard to the County's policy with
14 the exemption proposal. Were there any discussions at
15 that time prior to the letter of 10/11/88, within the
16 Commission, that you can enlighten this Board about
17 with regard to the County's exemption policy of
18 subdivisions that are on the waiting list?

19 A I'm sorry to say, but my recollection of
20 these details is very fuzzy. Much of the attention
21 that I gave at that time was trying to ensure that as

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1 much property could be placed in the resource
2 conservation area as possible. So most of my efforts
3 did not relate to that aspect of their program.

4 In fact, there are many elements of the
5 program that I'm ashamed to say I didn't review with
6 great care. I was focused on trying to get as much as
7 could possibly be placed in the resource conservation
8 area as possible, and this took a fair amount of
9 negotiation. So I'm sorry I can't assist.

10 MR. LAMARTINA: Thank you.

11 CHAIRPERSON HALE: Any other questions for
12 this witness? You may be excused as a witness.

13 Is there another person who would like to
14 testify? Please sign the witness list.

15 MR. BLUMENTHAL: Madam Chairman, may I
16 inquire, has this witness already testified? I have a
17 recollection that he did.

18 CHAIRPERSON HALE: If he has, he can't
19 testify again. I'm waiting for him to give us his
20 name.

21 MR. RUCKER: I have not testified.

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1 MR. BLUMENTHAL: All right. My apologies.

2 CHAIRPERSON HALE: I looked through the list.
3 I didn't see it.

4 Please identify -- raise your right hand,
5 please.

6 Whereupon,

7 COLBY RUCKER,
8 a Protestant, was duly sworn, and was examined and
9 testified as follows:

10 CHAIRPERSON HALE: Would you give us your
11 name and address for the record.

12 THE WITNESS: Yes. My name is Colby Rucker.
13 My address is Post Office Box 9686, Arnold.

14 CHAIRPERSON HALE: You may begin.

15 THE WITNESS: Thank you.

16 I'd like to bring a chair around here,
17 because I have some material and I think -- since you
18 don't have a table, it would be a little easier. If I
19 may please.

20 CHAIRPERSON HALE: You may sit at the table
21 and use the microphone.

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1 THE WITNESS: Well, I could stand. I'd like
2 to display some things. I'll bring it right back.

3 I want to make clear that tonight I'm
4 speaking for myself, not as a member of any commission,
5 association, coalition. But I'm going to be talking
6 about certain aspects of the forest on the site.

7 So I would point out that I'm a life member
8 of the American Forestry Association. I'm a senior
9 member of the State District Forestry Board for Anne
10 Arundel County, and a past-chairman. I've also been a
11 licensed tree expert by the State of Maryland for 31
12 years, and I'm also an officer of the Maryland Heritage
13 Tree Conservancy.

14 Certainly, anyone who had visited the site --
15 and I was asked to visit the site by Mr. Richard Klein
16 some months back -- would be impressed with the nature
17 of and diversity and stature of the forest that's on
18 the site. And, certainly, we would all admit that we
19 have less and less forest about us. What was once
20 average is now rare. What was once commonplace is now
21 significant, and yet we also realize that we cannot.

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1 preserve everything.

2 However, there have been long parts of the
3 subdivision ordinance which called for the preservation
4 of outstanding natural features insofar as possible.
5 Therefore, there are certain requirements that have to
6 be considered, whether it's before or after critical
7 areas. Certainly, in this case, there are aspects that
8 have not been considered and seriously call into the
9 question the competence and accuracy of the
10 environmental review which was afforded this site. And
11 I think that will become more apparent as I give you
12 the details of my testimony.

13 Mr. Klein called me because he had noticed a
14 number of mountain laurels which were on the site,
15 which he felt were very unusual. I visited the site
16 and found that the mountain laurels were -- and, though
17 we usually feel them to be shrubs, were in fact trees.
18 And there was an extensive grow with these trees. I
19 revisited the site, using a 22-foot pole appropriately
20 marked and a steel tape, carefully measured a number of
21 them. The outcome of this indicated that, by

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1 comparisons, they were indeed very, very unusual.

2 And I'd like to point out that since 1925,
3 when the State of Maryland's first forester, Mr. Fred
4 Beasley, initiated the Big Tree Champion Program that
5 there's been an increasing interest in that program,
6 and it has formed, certainly, a good guideline for
7 unusual trees and once the same concept was adopted by
8 the American Forestry Association in a nationwide
9 concept in 1940 and continues today.

10 These publications are not unusual. They are
11 available to everyone. Each time a new list is drawn
12 up, there are an extensive number of articles in the
13 newspaper, encouraging people to participate and
14 nominate trees all across the State. One of the first
15 lists available is the list of 1937, published by the
16 State in 1938. The next one was published in 1956.
17 There's another one in 1973, and the most recent was in
18 1990. The American Forestry Association published
19 their list in their bi-monthly magazine every two
20 years.

21 On this site, the mountain laurel, which is

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1 the champion at the present time, is measured according
2 to a formula by which the circumference of the trunk at
3 4-1/2 feet is measured in inches; the height in feet;
4 the spread, the average spread, in feet; and the spread
5 is actually divided by four. So, in this case, a tree,
6 shall we say, having a trunk 12 inches around and 20
7 feet high, and with a, we'll say, eight-foot spread, we
8 would be simply adding the 12 and the 20 and then two.

9 The present champion, Maryland champion, has
10 a total of 25 points, being a tree about 12 inches
11 around the trunk, roughly 14 feet tall, and a spread of
12 nine or so feet.

13 When I measured the trees on this site, the
14 mountain laurels, I was astounded to find ten trees
15 which exceeded the present Maryland champion. The
16 Maryland champion has a total points of 25-1/2, and I
17 found trees on this site that ran from 26-1/3 up to as
18 much as over 33-1/2 points. The trunks were up to as
19 much as 1/3 larger -- more than 1/3 larger, and the
20 heights ran up to as much as 20-1/2 feet.

21 Now, the thing that's unusual here is not

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1 there's perhaps, out of those ten, one tree which is
2 the new Maryland champion, but it raises the question
3 of why on this site are there so many significant
4 trees? We have to look something about the nature of
5 mountain laurel and the nature of the site to answer
6 that question.

7 The first thing, certainly, is the case of
8 any tree that new ones cut it down, and the reasons for
9 that would be found in a 1950 forest survey in the
10 State of Maryland by Mr. Beasley in 1915. And
11 throughout this book, there are very detailed maps. I
12 happened to open up to an Eastern Shore county here,
13 showing the delineation of forests and, also, the
14 nature of those forests, whether they were colored
15 forests, merchantable forests, sapling growth, pine,
16 deciduous, and so forth.

17 Indeed, this woodland existed in 1915 and was
18 significant then, having the second highest rating
19 being merchantable forests of from three to 8,000 board
20 feet per acre. If you visit the site today, you will
21 find a relatively few trees which have double or triple

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1 trunks, indicating the site was not cut for firewood,
2 anything that would have left a great deal of sunlight
3 in and promoted a lot of scrap growth from the stumps.
4 Certainly, I would imagine trees have been removed.
5 There are a few double trees in there, but the forests
6 have never been devastated for firewood or excessive
7 cutting. So, indeed, it's significant in that sense.

8 Now, as far as the requirement of mountain
9 laurel, I would refer to a reprint of a classic book in
10 1922 by Charles Brake Sargent, A Manual of the Trees of
11 North America. And in his description of mountain
12 laurel, he points out that "They often grow in a low
13 moist grounds near the margins of swamps or on dry
14 slopes under the shade of deciduous trees or on dry
15 rocky hillsides. Most abundant and often forming dense
16 and -- thickets on the southern Appalachians. Usually
17 shrubby and only arborescent, that is to say, a tree
18 form -- character, in a few secluded valleys between
19 the Blue Ridge and Allegheny Mountains of North and
20 South Carolina; also being of large size along some
21 small streams in Liberty County, Florida."

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1 I think most of us are familiar with the
2 mountain laurel, and it -- seeing these beautiful
3 blooms all on roadsides and the edge of woodlands and
4 in certain parts of our County, but we often think of
5 it as a shrub, for that is usually the case. So to
6 find ones that are tree stature, and, certainly, in
7 this part of this country, it's unusual.

8 First, as we look at the nature of the site,
9 the first thing, of course, is that these form a
10 continuous border, being from, say, probably 75 to 150
11 feet wide, extending all along the shoreline portion of
12 that property for -- I have no idea -- probably six or
13 800 feet. But county a northern exposure and the shade
14 of a thick forest behind them, it creates a much more
15 cool environment so they are not subjected to the
16 drying effects of our hot summers and so forth here and
17 on the coastal plain.

18 Also, the site is of lower elevation, being
19 below 20 feet, and this also helps us -- also being
20 quite flat, putting down the amount of drainage.

21 If we move to the soil survey of Anne Arundel

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1 County by the Department of Agriculture in 1973, I
2 think we find more of why there is something unusual
3 about this site that would give rise to such an unusual
4 feature. In all the soils or the matapex (phonetic)
5 soils, elevations zero to two percent, very flat. And,
6 first of all, we might look at how those figure in a
7 County-wide mapping of seven soil groups which occur in
8 Anne Arundel County.

9 Here we see the dark green which occurs down
10 here in the shady side area and up near the subject
11 property, being composed of an association of elkton
12 (phonetic), fellow (phonetic) and matapex soils.
13 What's interesting there is, in a brief description of
14 the seven soil groups, the other groups are generally
15 described as excessively drained, well drained,
16 moderately well drained, and so forth. But the elkton,
17 fellow, and matapex association says level to sloping,
18 poorly drained, and moderately well drained on these
19 soils, seemingly one in which a turned poorly drain is
20 mentioned.

21 It's also interesting if you look at old

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1 deeds in the courthouse of perhaps a hundred years ago,
2 the southern group area down here was at that time
3 called, in capital letters, The Great Swamp of Anne
4 Arundel County. Indeed, down there you find swamp red
5 oak. You find mistletoe and other plants that are
6 typical of that sort ecological association.

7 We might call this upper group here a
8 northern outlier of The Great Swamp of Anne Arundel
9 County. Certainly, we will look at areas there, like
10 parts of -- and so on, we see standing water at certain
11 times of the year. We see certain types of white oaks
12 and so forth that are typical to those found down at
13 Bear Neck and along West River and other places in the
14 southern area.

15 Certainly, when we look further into a
16 description of the matapex soil, we see further
17 indication of the question of drainage speaking of a
18 moderate permeability -- excuse me -- moderate
19 limitations upon permeability because of the -- water
20 table.

21 Also, we see a description for the matapex

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1 soils. It says that they are, for instance, "suited to
2 all crops grown in the County, but wetness and repeated
3 drainage limit their use. -- may be the -- spraying
4 and so forth. Seasonal wetness limits the matapex
5 soils for use in community development.

6 It also mentions, in this book, that the
7 acidity is high, that being the important factor for
8 the mountain laurels. When you put it all together,
9 that, indeed, this is a rare sight with the northern
10 exposure and these special soils and everything else,
11 an old forest having a very unusual natural feature,
12 not a single champion tree, but many champion trees.

13 I think the recognition of the importance of
14 champion trees is nowadays exemplified by the recent
15 State law which calls for the protection of trees
16 having trunks 3/4 the size of a State champion tree.
17 So, from that standpoint, any of these that would have
18 a trunk over 8-1/4 inches around, not very large, would
19 indeed, nowadays, under a new subdivision, probably be
20 subject to preservation.

21 But I'm not here calling for the preservation

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1 of champion trees, but for more of the entire group,
2 the entire ecological association here, which is very
3 important. And, certainly, we see, when we look at the
4 nature conservancy or the area efforts of the DNR
5 heritage program, the emphasis is on the preservation
6 of habitat for rare plants, rare animals, and so on.
7 Certainly, the animal itself, whether it's in a cage or
8 a plant in a pot, it is not going to accomplish the
9 ends desired.

10 The study that -- the continuation somewhere
11 in the group is dependent upon preserving the habitat.
12 Mr. Elbrich says land is the only thing that matters.

13 It's rather tragic, as in this case, to see
14 treating land with that 100-foot buffer which was
15 contemplated, for trees back in probably among the
16 buildings and parking lots and so forth; trees that
17 would undoubtedly have root systems compromised by
18 development; be subject to the greater wind, both
19 threatening to uproot them and, also, to dry them out.

20 It's certainly questionable how many of the
21 old trees could survive that way, and once they're

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1 gone, there's not much left, because -- as far as the
2 tree, because that 100-foot buffer will have been
3 diminished.

4 Why is this significant? It is in the old
5 subdivision ordinances, and I don't know if the numbers
6 are still correct. Some years back, it was 13-109.2,
7 preservation of existing features, saying, "Existing
8 features, which was added value to residential
9 development, or natural or man-made assets of the
10 County, such as trees, water courses, falls, beaches,
11 vistas, historic spots, historic architecturally
12 submitted to buildings, and similar irreplaceable
13 assets, should be preserved insofar as possible to
14 harmonious and careful design of the subdivision.

15 Now, certainly, sites like this have been
16 preserved in the past. Years ago, I would point to
17 Eagle Hill Bulge, where the -- itself, full of rare
18 bulb plants, orchids, and so forth, a cranberry bog,
19 was set aside as a conservation area, so delineated on
20 that subdivision plat.

21 More recently, at Watts (phonetic) Point up

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1 on the Severn River. I pointed out that there was
2 standards, Atlantic white cedars, which is a relatively
3 rare plant on the western shore of Maryland near the
4 entrance -- one of the -- I would say after you cross
5 the dam at the pond, it's on the left. And that was
6 also set aside as a conservation area.

7 The -- Estates subdivision at Arnold
8 identified a large red maple, which at that time was
9 the State champion. I had nominated it as the State
10 champion. It was accepted as such. And the tree had
11 75-foot spread and a rectangle of approximately 90 feet
12 on the side, was set aside as a conservation area.
13 That land was the highest and most level in the
14 subdivision, and yet the tree was considered to be that
15 significant.

16 At the present time, it's the second largest
17 in the State. It's like the larger one being found in
18 south Anne Arundel County.

19 It's also necessary to point out that the
20 concept of county trees first initiated by Prince
21 George's County has been well accepted, and in this

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1 county, I'm often asked to get some information on the
2 significance of various trees.

3 Since 1958, I've been -- accumulated
4 information on significant trees throughout the county,
5 and this list now covers more than 800 local trees.
6 So, over the years, I hope I have accumulated some
7 expertise and insight into what's important.

8 As far as the ecological significance of this
9 site, I would point to an ongoing project of mine,
10 which is a survey of -- flora of Anne Arundel County,
11 Maryland. And, at the present time, it covers more
12 than 1100 plants which occur in the county, records
13 going back to the 1880s and so on, which I have
14 accumulated according to field work by many other
15 people, including myself.

16 Certainly, I think it's clear that Planning
17 and Zoning -- it's their Environmental Section has done
18 a good job in general over the years trying to identify
19 sites of rare plants and significant trees and the
20 like.

21 I am, however, rather mystified as to what

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1 happened here. Mr. Soldano remarked something about
2 the site being "full of underbrush." I suppose the
3 underbrush he was speaking of was the mountain laurel
4 growth.

5 It seems to me they really can't have it both
6 ways. Under the existing subdivision ordinances,
7 significant natural features were supposed to be
8 protected insofar as possible. I don't think anyone
9 could -- I don't see how anyone could miss that many
10 champion trees or arborescent plants for a species that
11 is normally shrubbery, especially since it's such an
12 eye-catching shrub, such a likeable plant, to begin
13 with.

14 This was not some obscure plant that you hear
15 about and laugh about somewhere. This was a very
16 attractive plant and certainly very significant. I
17 would have to offer that something went wrong in the
18 rush of business or whatever, that there was
19 insufficient, inadequate, totally inadequate evaluation
20 of the natural features of the site. This is not a
21 single tree. This is a grove six or 800 feet long.

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1 I think it calls into correction of whether
2 this is, indeed, a valid subdivision to be
3 grandfathered in.

4 If it's -- I just cannot understand how
5 something like this could occur. I would maintain the
6 review of this subdivision was not properly conducted.
7 I would maintain that it's invalid, and it simply has
8 to be redrawn, preserving the site. I mean, that's not
9 quite so easy as some people might guess.

10 Certainly we've heard a lot here about
11 infiltration and so on, and I'm not going to say that I
12 am an engineer and an expert as far as that's
13 concerned. I would just refer anybody to what's in the
14 Sewell (phonetic) survey in 1973, as far as the
15 question of permeability, wet soils, and so forth.

16 If, indeed, there is going to be a runoff,
17 that cannot be infiltrated, where is that runoff going
18 to be directed? They just can't let it run through the
19 mountain laurel grove. It's going to have to be
20 conducted around it in a sensible manner.

21 Certainly, a plant like mountain laurel -- we

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1 all know about azaleas around your house. You can't
2 plant them amongst the foundation, where the line from
3 the concrete sweetens the soil. The mountain laurel is
4 the same thing.

5 So, it's people want to have grass nearby.
6 They'll bring your lawn, certainly applying a lot of
7 lime. That cannot be allowed to wash into the mountain
8 laurel growth.

9 As far as the microenvironment to keep this
10 site cool and so on, a certain amount of existing
11 forest has to be preserved. That's the sort of -- the
12 sense here is a buffer as much as in the case of the,
13 let's say, the Silliman (phonetic) maple, choosing a
14 rectangle that looks significantly larger than the root
15 system, to allow for future growth and the survival of
16 the tree.

17 Certainly, it's going to have to be a
18 question of establishing parent protection in the sense
19 of an easement that can be upheld, probably an easement
20 with the Maryland Environmental Trust. We can't have a
21 situation where there's a covenant, and neither party

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1 to the covenant is going to enforce it, because,
2 indeed, this is a feature which is not only attractive
3 to everyone who lives there, and is a feature for the
4 neighborhood, but is a notable feature important to
5 everyone in the county and, in fact, the State of
6 Maryland.

7 If this subdivision is ruled to be subject to
8 critical areas, the grove would still be subject to the
9 same call for protection, only the more so. Certainly,
10 here, we would have the question of protecting all the
11 trees that were 3/4 the trunk size of the State
12 champion and that would, even by those standards, call
13 for the protection of essentially the entire grove,
14 while, of course, we know that habitat protection is a
15 key feature -- forest and so forth of critical areas.

16 I only repeat myself, saying I cannot accept
17 that there was anywhere near adequate subdivision
18 review on this site. I would personally call it
19 incompetent, and I would suggest that this subdivision
20 proposal go back to square one.

21 Thank you.

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1 CHAIRPERSON HALE: Mr. Blumenthal.

2 CROSS-EXAMINATION

3 BY MR. BLUMENTHAL:

4 Q Mr. Rucker, have you shared your thoughts
5 with the Office of Planning and Zoning prior to this
6 evening?

7 A No, I have not.

8 Q Is there a reason why you haven't?

9 A The Office of Planning and Zoning in the
10 County has apparently made their mind up on this issue,
11 and I am here to try to encourage others as -- this
12 Board to cause the county to change their opinion.

13 Q Is mountain laurel a rare species?

14 A It's found over a large range. It's a very
15 familiar plant. As I pointed out, you usually see it
16 as a shrub.

17 Q I think you mentioned that there were eight,
18 nine or ten especially large specimens of mountain
19 laurel that you saw.

20 A Yes, ten were larger than the present State
21 champion.

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1 Q You may not be aware of it, but consultants,
2 environmental consultants for the applicant located ten
3 specimen trees and physically marked them. Did you
4 observe any physical markings around those trees?

5 A I saw something tied to two of them.

6 Q All right. If you saw something tied to what
7 were specimen trees, did that not raise perhaps a
8 specter in your mind that somebody was looking into
9 those particular trees? I mean, why would they have
10 been marked?

11 A I assume that they were probably marked by
12 Mr. Klein, who called me to the site, since the
13 mountain laurels were of special interest to him.

14 Q Do you have any knowledge or information
15 that, in fact, the Office of Planning and Zoning has
16 not looked into the species on the property and
17 discussed them with the applicant throughout the last
18 subdivision process?

19 A I'm reacting here to what I see is the bottom
20 line. I'm apparently seeing the 50-foot buffer, which
21 does not protect the mountain laurel growth.

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1 Q In your judgment in assuming that your
2 decision is final, what needs to be done to protect
3 what you think needs to be protected?

4 A First of all, it has to be surveyed to find
5 out the exact extent of the grove and the necessary
6 buffer to protect the microclimate. Then we would have
7 to decide how essential drainage can be conducted in
8 probably a couple of places through the grove where
9 there has been damage to the grove, and it would be at
10 least damaging. We would have to see how we could
11 protect the flow of acidity into the site and probably
12 establish covenant and for the future, maybe see how
13 it could be a feature to be enjoyed but not damaged by
14 the residents.

15 Q From your personal observations and without
16 the benefit of the kinds of examination that you are
17 speaking of, can you guestimate the amount of the site
18 that, in your judgment, would have to be preserved from
19 development to achieve what you're attempting to
20 achieve, whether it be in terms of depth from somewhere
21 or --

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1 A It's -- what I have here is a guestimate. I
2 did not feel I was on the property to do an extensive
3 survey. I visited it only two times. But, roughly, I
4 might guess, for whatever that's worth, that it might
5 be a section six to 800 feet long perhaps and 50 to 150
6 feet wide.

7 Q Now, you speak in terms of champion
8 specimens. I take it that, while it may change from
9 time to time, there's only one champion at any one
10 given time.

11 A The most recent State process, most all the
12 ones that were nominated, but in the State list, only
13 one is the champion. The national list includes trees
14 which are co-champions, which are perhaps within five
15 percent or so of the champion.

16 Q And what is the authority that designates
17 that a particular specimen is a champion?

18 A A State champion is that which is carried on
19 by the Department of Natural Resources, the Maryland
20 Forest Service. In the case of the national champion,
21 it's by the American Forestry Association.

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1 Q Are you aware of the number of specimen
2 trees, laurel specimens that are being preserved by the
3 development plan which has been approved?

4 A No, I'm sorry. I cannot tell you how that is
5 oriented in what number.

6 MR. BLUMENTHAL: Thank you. I have no
7 further questions.

8 CHAIRPERSON HALE: Mr. Murray.

9 MR. MURRAY: I have no questions.

10 CHAIRPERSON HALE: Ms. Baer.

11 MS. BAER: Yes, I do have a few questions.

12 BY MS. BAER:

13 Q Sir, have you been present throughout the
14 series of hearings, or have you just been here this
15 evening?

16 A I was here at the prior hearing, yes.

17 Q Were you there when Mr. Klein testified?

18 A Yes, I was.

19 Q Are you aware, as you recollect that
20 testimony, of any identification that he made of
21 mountain laurels in his site review or recommendation?

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1 A As I recall, Mr. Klein's testimony was
2 relating to the movement of undesirable matter in the
3 tidewater.

4 Q So, to your recollection, he did not make any
5 specific recommendation as to that movement to take
6 into account the identified grove of mountain laurel?

7 A I do not recall anyone else mentioning the
8 mountain laurels.

9 Q Mr. Blumenthal asked you if you ever
10 discussed your concern about the mountain laurels with
11 the Office of Planning and Zoning, and I believe you
12 responded that you had not.

13 A That's correct.

14 Q Have you dealt with the Office of Planning
15 and Zoning on other occasions?

16 A Many times I have reviewed subdivisions that
17 were in the early process.

18 Q And have you not generally known the Office
19 of Planning and Zoning to be receptive to the ideas of
20 others, especially others with specific knowledge or
21 expertise in a field?

1 A I have been well received by the
2 Environmental Section, and I'm not quite sure of the
3 nature of your question.

4 Q So there's no specific reason why you did not
5 talk to the Office of Planning and Zoning; in other
6 words, there wasn't any reason why you thought they
7 would close the door on you?

8 A When this -- back in 1983, '85, when this was
9 apparently being reviewed, I had not visited the site.
10 It was not on -- work shed, where I was concentrating
11 some of my interests at that time, and I did not review
12 that subdivision, and I was not involved. I did not
13 know that the mountain laurel grove was there until it
14 was -- until Mr. Klein told me.

15 At the present time, the level of input seems
16 to have moved to this Board, and that's why I'm here.

17 Q You have never -- from your knowledge, you
18 have never been turned down for an opportunity to speak
19 with the staff of Planning and Zoning?

20 A I've always been able to get my ideas. Not
21 everything that I had hoped for has come to pass.

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1 Q Would you say that's generally true in all
2 offices, that you don't always get everything you hope
3 for?

4 A The question here is a thing I think it's --
5 a degree. Certainly, I've -- I could point out many
6 significant aspects of this forest.

7 Q My question to you is that, generally
8 speaking, in an office where decisions are made like
9 planning decisions that one does not necessarily get
10 everything he hopes for.

11 A We usually get the significant parts, the
12 most significant things, and as things become less
13 significant, the chances are slimmer.

14 Q Have you reviewed the site plan to determine
15 whether the mountain laurels were -- those that you
16 identified as the ten, perhaps, outstanding mountain
17 laurels were identified on the site plan?

18 A I pointed out that the ten mountain laurels
19 are a clue to the significance of the entire site.
20 Saving ten mountain laurels in no way is my goal. The
21 goal is that you save the unique environment which can

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1 produce such plants. As these mountain laurels die 50
2 or 100 years from now, that same site could continue to
3 produce new trees that would have the same ecological
4 significance.

5 Q Now, when you gave Mr. Blumenthal a
6 guestimate on the area of six to 800 feet long by 100
7 to 150 feet deep, was that your estimate of the size of
8 the grove or the estimate of the size of property that
9 would have to be undisturbed in order to preserve the
10 grove?

11 A It's -- the grove -- that's probably the size
12 of the grove. The amount of buffer and shielding and
13 so on, that would require a more close evaluation of
14 the forest, the amount of shade, and so forth. That
15 would require detailed work, and it's not my property.
16 I didn't feel I had license to do more than I did.

17 Q I understand that it's not your property.
18 But, based on your knowledge of what kind of shading is
19 required for mountain laurel, if the grove is six to
20 800 feet long and 100 to 150 feet deep, how much more
21 than that would be required to protect that grove by

1 way of undisturbed area?

2 A In some areas, it's possible that there would
3 not have to be a significant buffer. If the trees on
4 that edge were appropriately located and so forth, that
5 might be sufficient. In other areas, indeed, I think
6 that more of a buffer would be appropriate. I think it
7 would be foolish for me to try to give any kind of
8 guess at this time.

9 Q But it would be fair to say that perhaps, in
10 some situations, you might need an extra 50 feet of
11 shade behind it; is that true?

12 A It could be, yes.

13 Q Now, do you know, from your personal
14 knowledge, whether the staff of the Office of Planning
15 and Zoning identified the grove of mountain laurel or
16 not?

17 A I have not -- no, I cannot say that I know
18 that.

19 Q And are you aware of anything in the law
20 which specifically preserves "champion trees" in Anne
21 Arundel County?

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1 A I think the application of the subdivision
2 ordinance that I quoted is quite broad, and I think the
3 examples of how conservation areas have been used
4 indicates how that is interpreted by the department,
5 and I mentioned the preservation of bulbs, a champion
6 tree, a grove of cedars, so it's a question of -- the
7 application of an existing ordinance.

8 Q My question to you is, are you aware of
9 anywhere in the Anne Arundel County Code that
10 specifically protects "champion trees"?

11 A Personally, I take the ordinance that I
12 quoted to cover all such things.

13 Q Is there anyplace you know of in the Anne
14 Arundel County Code that uses the term "champion
15 trees"?

16 A It may be at the present time, because of the
17 State law, that that is the case.

18 Q That what is the case?

19 A The champion trees are indeed mentioned. It
20 may well be.

21 Q Are you aware of anyplace in the Anne Arundel

1 County Code where the term "champion tree" is used?

2 A I do not have that information with me, no.

3 Q So you are not aware of anyplace where that
4 term is used?

5 A Not -- I think your question is very narrow,
6 and in that sense, I would say, no, I am not aware of
7 that.

8 Q Are you aware of the fact that the code that
9 you cited is extraordinarily outdated, that the 1300
10 numbers haven't been used for many years?

11 A It was the only thing I had at my house.

12 Q So you did not come to the office of Planning
13 and Zoning to read what the current Code provides?

14 A If this has indeed been changed, I would
15 stand corrected.

16 MS. BAER: I have no further questions.
17 Thank you.

18 CHAIRPERSON HALE: Members of the Board.
19 Seeing no further -- any other questions for this
20 witness? You may be excused.

21 THE WITNESS: Thank you.

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1 CHAIRPERSON HALE: Are there other
2 protestants who wish to testify?

3 MS. ROSSO: Good evening, members of the
4 Board. My name is Mary Rosso. I'm here actually as
5 the --

6 CHAIRPERSON HALE: Would you be sworn in?

7 MS. ROSSO: Yes.

8 CHAIRPERSON HALE: Have you signed the
9 witness list?

10 MS. ROSSO: No.

11 CHAIRPERSON HALE: Would you raise your right
12 hand, please.

13 Whereupon,

14 MARY ROSSO,
15 a witness, having been duly sworn, was examined and
16 testified as follows:

17 THE WITNESS: Actually, I'm here tonight --

18 CHAIRPERSON HALE: State your name and
19 address, please.

20 THE WITNESS: Mary Rosso, R-O-S-S-O, 845
21 North Shore Drive, Glen Burnie, Maryland 21060.

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1 CHAIRPERSON HALE: You may begin.

2 THE WITNESS: I'm here tonight as a -- to
3 Senator Winegrad (phonetic), who was called out of town
4 and could not be here tonight to testify. He was
5 standing by for the other hearings, and he didn't
6 realize that this was going to be. He figured he had
7 another day, but, at any rate, he wanted me to at least
8 come down in this meeting to register that he was
9 opposed to this grandfathering, and I believe that he
10 has appeared before you before on something similar in
11 another case in reference to the County's
12 grandfathering law.

13 I'm not here to testify for him as much as to
14 say that he's very concerned and he's sorry that he
15 can't be with the Board tonight. If there is another
16 hearing, if this is going to go beyond tonight,
17 certainly he would be -- he'd try to make it back to be
18 here in time to testify.

19 That's all I have to say for the Senator, but
20 I am also here as an individual. And I would like to
21 say that, as a person who has worked for a long time on

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1 the critical areas law and watched what's happened in
2 the areas, this has come to our attention recently --
3 or my attention recently about the grandfathering
4 subdivision.

5 It's news to me tonight that I heard, and I'm
6 not quoting the grandfathering subdivision as not just
7 this other law, which refers to project approval in
8 another exemption. And I think it's really an
9 aberration of what's happening to our critical areas
10 laws, that certain developments like this can occur in
11 very critical areas. And I would hope the Board, in
12 its wisdom, will listen to the expert witnesses that
13 came forward before you in presenting -- and very
14 compelling evidence that this is wrong and should not
15 happen. And I would hope that you would listen to them
16 and vote against this. Thank you.

17 CHAIRPERSON HALE: Mr. Blumenthal.

18 THE WITNESS: Oh, hey, you're going to hurt
19 my feelings if you don't ask me something.

20 (Laughter.)

21 MR. BLUMENTHAL: Madam Chairman, this will be

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1 a first, but I have no questions, as much as I should
2 like to for any given reason.

3 (Laughter.)

4 CHAIRPERSON HALE: Mr. Murray.

5 MR. MURRAY: No questions.

6 CHAIRPERSON HALE: Ms. Baer.

7 MS. BAER: No questions.

8 CHAIRPERSON HALE: Members of the Board.

9 Seeing no questions, you may be excused.

10 THE WITNESS: Thank you.

11 CHAIRPERSON HALE: Are there additional
12 witnesses who wish to testify? Seeing none, we'll go
13 to rebuttal testimony. Mr. Blumenthal.

14 MR. BLUMENTHAL: None, thank you.

15 CHAIRPERSON HALE: Mr. Murray.

16 MR. MURRAY: --

17 MR. BLUMENTHAL: Madam Chairman, I thought
18 that all testimony ends somewhere, and that I, as
19 representative of the applicant, having the burden of
20 proof, had the opportunity to rebut, and rebuttal ended
21 there.

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1 CHAIRPERSON HALE: Mr. Murray, can you
2 explain to the Board why you want to have some rebuttal
3 now.

4 MR. MURRAY: Certainly. Mr. Klein testified
5 about various water quality in -- of the development.
6 One of the County's witnesses, whose name I cannot
7 recollect --

8 CHAIRPERSON HALE: Ms. Curtis.

9 MR. MURRAY: Ms. Curtis testified that
10 certain of those points were not in as Mr. Klein
11 indicated for reasons that she stated. I would like to
12 put Mr. Klein on to rebut that testimony so that he can
13 indicate why he thinks what she said is not correct.

14 MR. BLUMENTHAL: And then we should have the
15 opportunity to rebut what Mr. Klein said. At some
16 point, a case should be over, and my understanding of
17 normal jurisprudence, although the rules before this
18 Board are somewhat different, is that the party having
19 the burden of proof has the opportunity to rebut, and
20 that ends the testimony before the Board. Otherwise,
21 where do you draw that line?

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1 (Whereupon, there was a discussion off
2 the record.)

3 CHAIRPERSON HALE: The Board has heard
4 testimony from witnesses on both sides of the issue of
5 water quality, and rebuttal testimony -- a chance to
6 rebut shouldn't get us back into which one said what.

7 And so the Board is going to take the
8 testimony we have from those two witnesses and use it,
9 and we don't want to draw this out any further tonight.

10 So at this point --

11 MR. MURRAY: Madam Chairman, just so I can
12 keep this record as useful as potentially possible, may
13 I have this document marked, which should have been Mr.
14 Klein's rebuttal testimony. I'm assuming it will be
15 objected to when I ask for it to be admitted, but at
16 least have it become part of the record as an
17 unadmitted document.

18 MR. BLUMENTHAL: Counsel has succinctly set
19 forth the procedure that will follow.

20 (Laughter.)

21 CHAIRPERSON HALE: Ms. Baer.

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1 MS. BAER: I have no objection to it being
2 marked. I'm going to have objection to it being
3 admitted.

4 MR. MURRAY: Tonight this -- it more --

5 (Laughter.)

6 CHAIRPERSON HALE: We will mark it and note
7 that there were objections, and it was not admitted.

8 VOICE: What was that number?

9 CHAIRPERSON HALE: 15, Protestants' Exhibit
10 15, not admitted.

11 (Whereupon, the document was marked for
12 identification Protestants' Exhibit No. 15.)

13 CHAIRPERSON HALE: This Board has heard
14 testimony on this case, which began in April. There
15 are some significant legal issues at stake. The Board
16 is requesting that closing argument be prepared in
17 writing and that the applicant send us that within 15
18 days of tonight, and that ten days thereafter the
19 protestants and the County respond, and that the
20 applicants have an additional ten days after that for
21 rebuttal.

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1 VOICE: Would you tell that to us again?

2 CHAIRPERSON HALE: 15 days for the applicant,
3 ten days thereafter for the County and the Protestants,
4 and --

5 MS. BAER: Would it be acceptable to have an
6 opportunity to look at a calendar to see where that
7 would fall?

8 CHAIRPERSON HALE: Certainly. We're talking
9 calendar days here. It will begin tomorrow morning
10 rather than tonight.

11 MR. MURRAY: It might -- here tonight on what
12 the dates are.

13 CHAIRPERSON HALE: They're getting that now.

14 MS. BAER: As I understand it, that would be
15 before close of business September the 2nd for the
16 applicants?

17 CHAIRPERSON HALE: Correct.

18 MS. BAER: And would be September the 15th
19 for Protestants and County?

20 CHAIRPERSON HALE: Now, wait a minute. Ten
21 days --

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1 MS. BAER: Oh, I'm sorry.

2 CHAIRPERSON HALE: The 14th, Monday the 14th.

3 MS. BAER: It would be the 15th -- that's
4 right, the 14th is not a holiday, so it would be
5 September 14th.

6 CHAIRPERSON HALE: September 24th would be
7 the applicant's rebuttal.

8 This hearing is presently recessed, and we
9 will render a decision within 60 days of receiving the
10 final rebuttal argument from the Applicant on whatever
11 day that is up till September 24th.

12 (Whereupon, at 10:25 p.m., the above-
13 entitled hearing was recessed.)

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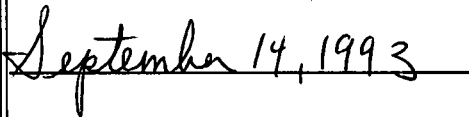
CERTIFICATE OF NOTARY

I, SUSAN DILLEY,, the officer before whom the foregoing testimony was taken, do hereby certify that the witnesses whose testimony appears in the foregoing transcript appeared before me; that the testimony of said witnesses was taken by me by magnetic tape and thereafter reduced to typewriting by me or under my direction; that said testimony is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony is taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



SUSAN DILLEY
Notary Public in and for
the State of Maryland

My Commission Expires:



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